

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY SIXTEEN

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Wednesday, February 11, 2015
10:26 a.m.

Marcia G. Patrisso, RMR, CRR
Cheryl Dahlstrom, RMR, CRR
Official Court Reporters
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PROCEDINGS

THE CLERK: All rise.

(The venire enters the courtroom at 10:26 a.m.)

THE CLERK: All rise for the Honorable Court.

(The Court enters the courtroom at 10:29 a.m.)

THE CLERK: Please be seated.

THE COURT: Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: I'm glad to see you all made it here.

01:58 I0 safely.

We are continuing the process of selecting a jury for the case of United States versus Dzhokhar Tsarnaev. As you know, Mr. Tsarnaev is charged in connection with a bombing that occurred near the finish of the Boston Marathon on April 15, 2013, that resulted in the death of three people. He's also charged in the death of an MIT police officer and other offenses that occurred on April 18 and 19, 2013.

Some, but not all, of the crimes charged are, by statute, potentially punishable by death. You will recall from my prior instructions that the trial jury will first consider and decide whether the government has proved Mr. Tsarnaev's guilt of any or all of the charges against him. If he is convicted of any of the capital crimes, that is, crimes potentially punishable by death, the jury will then consider and decide whether he will be sentenced to death for any such

1 crime or to life in prison without the possibility of release.

2 You may have wondered why the death penalty could be a
3 possibility in this case in view of the fact that Massachusetts
4 does not provide the death penalty for murder or any other
5 violation of Massachusetts law. The reason is that this is a
6 federal case involving alleged violations of federal law rather
7 than a state case involving violations of Massachusetts law.

8 If the jury convicts Mr. Tsarnaev of any of the
9 capital crimes charged in the indictment, the same jury will
02:00 10 hear additional evidence and then decide whether to sentence
11 him to death or to life in prison without the possibility of
12 release. Because the jury that is selected to decide the
13 defendant's guilt or innocence will also decide his punishment
14 if he is convicted, it is necessary to question prospective
15 jurors about your feelings and beliefs about the death penalty
16 as part of the process of selecting a jury.

17 Let me explain briefly the procedures that must be
18 followed in a case in which the death penalty is or may be an
19 issue. As in any criminal trial, initially the government will
02:01 20 have the burden of proving that Mr. Tsarnaev is, in fact,
21 guilty of any crime with which he is charged. If he is
22 convicted by the jury of a crime for which the death penalty
23 may lawfully be imposed, there will be a second phase of the
24 trial, referred to in shorthand generally as the penalty phase.

25 In the penalty phase, the government will introduce

1 evidence that seeks to prove beyond a reasonable doubt, first,
2 that Mr. Tsarnaev acted with sufficient intent to be subject to
3 the death penalty; and, second, that aggravating factors about
4 the killings or about the defendant justify sentencing him to
5 death.

6 Aggravating factors are circumstances that, if proven,
7 would make the crimes particularly serious or blameworthy and,
8 therefore, under the law, may justify imposing a more severe
9 sentence on this defendant compared to other persons convicted
02:02 10 of intentional killing or murder. The government will bear the
11 burden of proving any alleged aggravating factors to every
12 juror beyond a reasonable doubt.

13 The defense will have an opportunity in the penalty
14 phase to present evidence of what it will argue are mitigating
15 factors. Mitigating factors are usually circumstances about
16 the crime or crimes or about the defendant's background or
17 character that would suggest that the death penalty is not an
18 appropriate sentence in the case or that life imprisonment
19 without the possibility of release is adequate to punish the
02:02 20 defendant.

21 Unlike the proof of aggravating factors, a mitigating
22 factor need only be proven by the greater weight of the
23 evidence. That is a less demanding standard of proof than
24 proof beyond a reasonable doubt. Again, unlike proof of
25 aggravating factors, mitigating factors do not have to be

1 proven to the satisfaction of all 12 jurors. Any juror who
2 finds or determines a mitigating factor to have been proved by
3 a greater weight of the evidence may consider that factor in
4 deciding an appropriate sentence in the case regardless of
5 whether any or all of the other jurors agree that the
6 mitigating factor has been proved.

7 After the parties have made their respective
8 presentations during the penalty phase, the jury will weigh all
9 the evidence. Before a jury could vote to impose the death
02:03 10 penalty, every juror would have to be persuaded that certain
11 threshold factors that make the defendant potentially subject
12 to the death penalty have been proven beyond a reasonable
13 doubt. In addition, in order to impose the death penalty,
14 every juror would have to be persuaded that any proven
15 aggravating factors sufficiently outweigh any mitigating
16 factors found by any juror or jurors to justify a sentence of
17 death. Even if the jury did not find any mitigating factors in
18 the case, it would still have to be unanimously persuaded that
19 any proven aggravating factors were themselves sufficient to
02:04 20 justify a death sentence.

21 You should understand that a jury is never required to
22 find that a sentence of death is justified. The decision
23 whether the government has proven that the defendant should be
24 sentenced to death must ultimately be made by each juror
25 himself or herself. If, however, every juror is persuaded that

1 the death penalty should be imposed, I would be required as the
2 trial judge to sentence the defendant to death; in other words,
3 I could not change the jury's decision. The jury, and not the
4 judge, is responsible for determining whether a defendant who
5 is convicted of a capital crime will live or die.

6 What I've just described is only an overview of the
7 law that is applicable to the jury's consideration of the death
8 penalty. If you are selected to serve on the jury and if you
9 find the defendant guilty of a crime or crimes punishable by
02:05 10 death, I will give you very detailed instructions concerning
11 your duties in deciding whether to impose the death penalty or
12 life imprisonment without possibility of release and the law
13 that must be followed in making that decision.

14 As I told you when you filled out your questionnaires,
15 there are no right or wrong answers to any of the questions
16 that you have been asked or that you will be asked in this
17 process. We ask them because both the government and
18 Mr. Tsarnaev are entitled to a jury that does not have its mind
19 firmly made up one way or another before hearing the evidence
02:05 20 and a detailed explanation of the law. That applies both to
21 whether the defendant is guilty or not guilty of the specific
22 crimes that are charged in the indictment, and if he is
23 convicted of a capital crime, whether he should be sentenced to
24 death or to life in prison without the possibility of release.

25 So today I'm going to question each of you

1 individually about some issues that are relevant to the process
2 of selecting a jury. In a moment we're going to excuse you
3 back to the room you were just assembled in, and one by one
4 you'll come into the courtroom and we'll follow up with some
5 questions.

6 There will be some people in the room in addition to
7 the lawyers and their staff, a few people, and the proceedings
8 are being transmitted simultaneously by video and audio to
9 overflow courtrooms where there may be other people watching.
02:06 10 We will not identify you by name, but rather by number, and
11 you'll be seated so that the video camera will be behind you.

12 Your answers will generally be public, but if you
13 believe a truthful answer would require you to reveal sensitive
14 personal information, we will temporarily stop the audio
15 transmission to those courtrooms so that people observing there
16 will not hear your answer. We'll also excuse people not
17 affiliated with the case from the room for the duration of that
18 answer.

19 Again, we do not expect or want any particular answer
02:07 20 to any question. All we want and what the law expects is that
21 you provide accurate and truthful answers to the questions that
22 are asked. If you do that, then you will be doing your duty as
23 a citizen and as a juror no matter what your answers may be.

24 I want to remind you about something I instructed you
25 on before. As I told you before, a jury's verdict must be

1 based on the evidence produced at trial and must be free from
2 outside influence; therefore, I remind you again that it is
3 extremely important that you do not discuss the case, including
4 the jury selection process, with your family and friends, each
5 other, or any other person until you've been excused or, if
6 selected as a juror, until the case has concluded. And again,
7 of course, you're not to do any independent research online or
8 otherwise, or otherwise read, watch or listen to any reports
9 about the case in the media.

02:08 10 When you finished your questionnaires, you signed at
11 the last page where the statement above -- affirming that your
12 answers were true under the pains and penalty of perjury.
13 Similarly, your answers today must be given under a similar
14 affirmation or oath, and the clerk would now ask you to rise
15 and he will administer that to you.

16 (Venire duly sworn.)

17 THE COURT: All right, jurors. We'll ask you to
18 withdraw now, and we'll have you back one by one. We
19 appreciate your patience as we get through this process.

02:08 20 (The venire exits the courtroom at 10:39 a.m.)

21 THE COURT: Good morning.

22 COUNSEL IN UNISON: Good morning.

23 (Pause.)

24 THE COURT: All right. Starting with Number 366.

25 THE CLERK: I remind counsel and everybody to speak

1 into the mics, remember?

2 Juror No. 366.

3 MR. McALEAR: Juror 366.

4 (The juror enters the courtroom.)

5 THE CLERK: Sir, over here, if you would. Have a seat
6 right here.

7 And if you could do me a favor, keep your voice up and
8 speak into the mic so everyone around the table can hear you,
9 okay?

02:12 10 THE JUROR: Okay.

11 THE COURT: You can adjust that and make it
12 comfortable for yourself.

13 Good morning.

14 THE JUROR: Good morning.

15 THE COURT: Since you were here last to fill out the
16 questionnaire, have you been able to follow the instructions to
17 avoid discussing the case with anyone in substance?

18 THE JUROR: In substance, yes, sir.

19 THE COURT: And also, as much as possible, to avoid
02:12 20 any media accounts of the case?

21 THE JUROR: If I hear it, I turn it off.

22 THE COURT: Thank you. So we're going to follow
23 up -- that's the questionnaire you filled out. We're going to
24 follow up on some of the things you told us about.

25 You work as a food service supervisor in a nursing

1 facility?

2 THE JUROR: Yes, sir.

3 THE COURT: And you've been there, I guess, quite a
4 while?

5 THE JUROR: Yes, sir. We just were sold this past
6 July from Kindred to a new company, Chestnut. So it's actually
7 like starting from day one.

8 THE COURT: In what sense? New routine?

9 THE JUROR: I lost all my time. I lost my 25 years.

02:13 10 THE COURT: Really?

11 THE JUROR: Yes, sir.

12 THE COURT: Well, are you a salaried employee?

13 THE JUROR: No, sir. I'm hourly.

14 THE COURT: So if you had to serve two, three, four
15 months on this case, that would cost you your hourly wages?

16 THE JUROR: I would not get paid, sir. I have no
17 vacation time. I have no holiday time. I have not earned
18 anything till July 1st.

19 THE COURT: Okay. I think that's all we need to know.

02:13 20 Thank you.

21 THE CLERK: Just leave that right here and I'll take
22 care of it.

23 (The juror is excused.)

24 [REDACTED]

25 [REDACTED]

1 MR. WEINREB: I don't think so.

2 THE COURT: I think it's reported.

3 MR. WEINREB: Yes.

4 THE CLERK: Juror No. 369.

5 THE JURY CLERK: Juror 369.

6 (The juror enters the courtroom.)

7 THE CLERK: Sir, over here, please. Have a seat, if
8 you would.

9 Do me a favor, keep your voice up and speak into the
02:15 10 mic so everyone around here can hear you.

11 THE JUROR: All right.

12 THE COURT: Good morning.

13 THE JUROR: Good morning.

14 THE COURT: Have you been able, since you were last
15 here, to avoid discussion of the case in substance with anyone?

16 THE JUROR: Yup.

17 THE COURT: And as much as possible, to avoid seeing
18 media reports about the case?

19 THE JUROR: Yup.

02:15 20 THE COURT: Okay. So that's the questionnaire you
21 filled out. We're going to follow up on some of the things you
22 told us about.

23 I would like you to look at page 5. Your answer --
24 what we have is Question 10, which is about the schedule in the
25 case and the length of the case and so on, and you told us

1 you're self-employed and would like to discuss with your family
2 and business partner whether you would be able to serve on a
3 three- to four-month case.

4 Have you had those discussions?

5 THE JUROR: Yeah.

6 THE COURT: And what do you think?

7 THE JUROR: I mean, yeah, it's -- definitely it will
8 crush my business, no question about it, you know.

9 THE COURT: Tell me about the business. Is it a
02:16 10 two-person operation?

11 THE JUROR: Yeah, I have a partner. We do hardwood
12 floors. And, you know, we pretty much just got our feet on the
13 ground within the last couple of years. So, yeah, it will be
14 crushing financially but...

15 THE COURT: Well, we certainly don't want you to be
16 crushed financially. Let me just ask you about it. How is
17 your compensation figured? Do you --

18 THE JUROR: It's half and half.

19 THE COURT: Of what the joint enterprise does, is that
02:16 20 it?

21 THE JUROR: Yeah, pretty much.

22 THE COURT: Is it possible for the work to go on with
23 your partner supervising it? You have people that work for
24 you?

25 THE JUROR: On occasion, yeah. We have a guy that

1 helps us, yeah.

2 THE COURT: Here's what I'm getting at. If other
3 people were able to do the work so the business kept getting
4 the money, would you still be able to split it with your
5 partner and you yourself get the money?

6 THE JUROR: Yeah.

7 THE COURT: Or some -- or alternatively, is some of
8 your compensation based on your own time that you put in, like
9 an hourly rate or something like that?

02:17 10 THE JUROR: Well, there's just like certain things
11 that I can do and he can't and vice versa, so you know.

12 THE COURT: You mean technically?

13 THE JUROR: Technically, yeah. There's certain, like,
14 customer-relation stuff that is not really his strong suit.

15 THE COURT: I see.

16 THE JUROR: And stuff like that.

17 THE COURT: Well, would you be able, after hours and
18 on Fridays and weekends, to attend to those kinds of things?

19 THE JUROR: I mean, I could hopefully. But even
02:17 20 like -- I had something to do today. I didn't know I was
21 supposed to be here until last night, and then I had to cancel.
22 So stuff like that is a pain in the neck, but...

23 THE COURT: Okay. All right. Thanks.

24 THE JUROR: All right?

25 (The juror exits the courtroom.)

1 THE CLERK: Juror No. 370.

2 THE JURY CLERK: Juror 370.

3 (The juror enters the courtroom.)

4 THE CLERK: Ma'am, over here, if you would, please.

5 Over here. Thanks. Have a seat.

6 If you could do me a favor, keep your voice up and
7 speak into the mic so everyone around the table can hear you.

8 The mics are adjustable, so adjust it to your comfort.

9 THE COURT: Good morning.

02:19 10 THE JUROR: Good morning.

11 THE COURT: Since you were last here have you been
12 able to avoid discussion of the case with anyone as I had asked
13 you to?

14 THE JUROR: I'm trying to.

15 THE COURT: And succeeding --

16 THE JUROR: Yeah.

17 THE COURT: -- by and large?

18 THE JUROR: By and large.

19 THE COURT: And avoiding any media about it?

02:19 20 THE JUROR: Yes.

21 THE COURT: So that's the questionnaire you filled out
22 in front of you. We're going to ask you some follow-up
23 questions about the information you put in.

24 Let me start with what you do for employment.

25 THE JUROR: What page?

1 THE COURT: This is page 10. Tell us about your
2 employment.

3 THE JUROR: What's that?

4 THE COURT: Tell us about your employment.

5 THE JUROR: I work at an assisted-living facility with
6 the elderly.

7 THE COURT: And what do you do?

8 THE JUROR: Serve the meals, do activity with them.

9 THE COURT: Is this a full-time job?

02:20 10 THE JUROR: Yes.

11 THE COURT: And you've been doing it for, it looks
12 like, about five years or so?

13 THE JUROR: Five years, yeah.

14 THE COURT: If you'd flip back to page 5, we asked you
15 there whether the schedule of the case, including the likely
16 duration of it, several months, would present a significant
17 hardship to you, and you said no.

18 THE JUROR: Well, I'm not sure. Does your employer
19 pay you? I couldn't not get paid for four months.

02:20 20 THE COURT: I guess that's the question we ask you.
21 What would the employer do?

22 THE JUROR: Yeah, I don't know. I didn't --

23 THE COURT: Are you -- are you salaried or do you get
24 paid an hourly --

25 THE JUROR: Hourly.

1 THE COURT: And you haven't discussed with the
2 employer whether you would get paid if you were here?

3 THE JUROR: No. I just actually thought you did. I
4 thought it was --

5 THE COURT: Oh, I see. Okay. No, it's not
6 necessarily required for employers to do that.

7 How big is the facility?

8 THE JUROR: It has places all over the country. It's
9 a big corporation.

02:21 10 THE COURT: But, I mean, is it something you submit
11 time sheets for on a weekly basis or do you just have regular
12 hours and you get --

13 THE JUROR: I have regular hours. Regular.

14 THE COURT: So you don't keep time; they just assume
15 you've worked whatever the number of hours required is?

16 THE JUROR: Yeah.

17 THE COURT: Okay. I'm not sure you'd be able to
18 handle it, so, financially.

19 THE JUROR: Okay.

02:22 20 THE COURT: So thanks.

21 (The juror exits the courtroom.)

22 THE CLERK: Juror No. 375.

23 THE JURY CLERK: Juror 375.

24 (The juror enters the courtroom.)

25 THE CLERK: Sir, over here, if you would. Have a

1 seat.

2 Do me a favor, keep your voice up, speak into the mic
3 so everyone around here can hear you.

4 THE JUROR: Okay.

5 THE CLERK: This is adjustable.

6 THE COURT: You don't have to get that close.

7 THE JUROR: Okay.

8 THE COURT: Good morning.

9 THE JUROR: Good morning.

02:23 10 THE COURT: Since you were here last have you been
11 able to avoid any discussion of the substance of the case?

12 THE JUROR: Absolutely.

13 THE COURT: And also as much as possible avoid any
14 media reports about the case?

15 THE JUROR: Yes, indeed.

16 THE COURT: Okay. Thank you. Tell us about your
17 employment.

18 THE JUROR: I work at a local college, Suffolk
19 University, over near the Statehouse.

02:23 20 THE COURT: What do you do?

21 THE JUROR: I'm an academic advisor there.

22 THE COURT: Tell me a little more.

23 THE JUROR: I work with students. I help them to stay
24 on track with their studies, advance toward their degree goals
25 in an efficient manner, some academic support counseling as

1 well.

2 THE COURT: Are there other people who do the same
3 thing?

4 THE JUROR: Yes; I'm in a large office.

5 THE COURT: How many of you are there?

6 THE JUROR: I think 11 at the moment.

7 THE COURT: And how long have you been doing it?

8 THE JUROR: I've been doing that particular job for
9 about two years now.

02:24 10 THE COURT: And this is the undergraduate school --

11 THE JUROR: That's correct.

12 THE COURT: -- or both?

13 THE JUROR: No, I primarily work with undergraduates.

14 THE COURT: In your questionnaire you -- if you look
15 at page 5, Question 10, this was -- we set out the schedule in
16 the case, including the possibility it would last for several
17 months, and you wrote, "It would be no unusual hardship but
18 uncertain if I can still get paid by the employer."

19 Have you had any discussions about that?

02:24 20 THE JUROR: You know, it's been so busy I haven't
21 really followed up with my human resources department.

22 THE COURT: Are you a salaried employee?

23 THE JUROR: Yes.

24 THE COURT: We asked people about their social media
25 use.

1 THE JUROR: Sure.

2 THE COURT: You say you use Facebook and Instagram but
3 very infrequently. Is that a --

4 THE JUROR: That's correct.

5 THE COURT: Do you use any of those in your work or is
6 this just social?

7 THE JUROR: Just social.

8 THE COURT: Do you typically both post and view other
9 posts, or do you look at what other people have put up?

02:25 10 THE JUROR: It's very rare for me to post. I
11 occasionally will put vacation pictures on, things like that.

12 THE COURT: Some of the -- I'm just looking at page
13 17, Question 58. Some of the students you counsel are
14 international students?

15 THE JUROR: Yes, we have a large international
16 population.

17 THE COURT: And from all over?

18 THE JUROR: All over.

19 THE COURT: If you turn to the next page, 66 -- 65 and
02:26 20 66 -- I guess 65 is the better one -- there are some regions
21 there that are identified. Do you know if you have any
22 students from those areas?

23 THE JUROR: No.

24 THE COURT: Any advisees, I guess is the way I should
25 put it?

1 THE JUROR: Well, I can say that I have worked
2 recently with a student from Russia.

3 THE COURT: Whereabouts, do you know? From where in
4 Russia?

5 THE JUROR: To be honest, I don't really know. It
6 just wasn't pertinent to the conversation.

7 THE COURT: Fine.

8 Let me ask you to turn to page 20 and Question 77. In
9 this question we asked whether as a result of things you'd seen
02:26 10 or read in the news or otherwise had you formed an opinion
11 about whether the defendant was guilty or not, and if so,
12 whether he should receive the death penalty or not. And it
13 appears that you may -- your original answer to A and B and
14 then changed it and so --

15 THE JUROR: Yeah, it's a little scribbled.

16 THE COURT: So you had, I guess, selected "yes" as
17 your answer to question Part A, and "no" to Part B, although
18 initially you thought maybe you would say you were unsure?

19 THE JUROR: That's correct.

02:27 20 THE COURT: Okay. And then you said you were unsure
21 as to the other penalty questions?

22 THE JUROR: Uh-huh.

23 THE COURT: Below that we asked if you answered yes to
24 any of these questions, would you be able or unable to set
25 aside your opinion and base your decision on the evidence

1 presented to you at court rather than things you'd seen before
2 the trial, and you checked the box "able."

3 THE JUROR: That's correct.

4 THE COURT: You think even if you have an opinion at
5 this point, you could set it aside and make a decision only
6 based only on the evidence at trial?

7 THE JUROR: To be honest, your Honor, there wasn't an
8 "unsure" policy, so I think on that day I was leaning more
9 towards "able," but I think it would be, really, "unsure."

02:28 10 THE COURT: So you understand, I'm sure, that in our
11 criminal justice system a person is accused of a crime, is
12 presumed to be innocent of that crime, unless and until the
13 government proves that he's guilty --

14 THE JUROR: Absolutely.

15 THE COURT: -- by the evidence at trial.

16 The government's burden is to prove the defendant's
17 guilt beyond a reasonable doubt by the evidence.

18 THE JUROR: Certainly.

19 THE COURT: So we ask jurors to put their mind in the
02:28 20 condition where they will listen to the evidence -- all the
21 evidence produced, and at the end decide whether the government
22 has met its burden to prove the defendant guilty of the charged
23 crime beyond a reasonable doubt, putting aside, of course,
24 things that are extraneous to the body of evidence.

25 Do you think if you were a juror in this case you

1 would be able to do that?

2 THE JUROR: Yes.

3 THE COURT: I think -- okay. I'll just leave it at
4 that.

5 We asked in Question 81 on the next page if you or
6 someone close to you had been personally affected by the events
7 of the week of April 15th, and you said you didn't quite
8 understand the question.

9 THE JUROR: Sure.

02:29 10 THE COURT: It was intended to be a very general
11 question. So if you thought you had detected any effect, that
12 you tell us about it.

13 THE JUROR: Yeah. No, the reason that I answered that
14 was based on my instructions that day from the jury
15 administrator. I have a friend who works right near there.
16 He's a dentist, locally. And I know he was affected by it. He
17 was worried about it. But he wasn't personally injured. I
18 didn't know anyone who was directly injured by it.

19 But, you know, sure, I know a lot of people who were
02:30 20 affected by it. I think everyone who lives -- I think everyone
21 in the country was affected by it in some way. So that's why I
22 had difficulty expanding on that answer. I hope that makes
23 sense.

24 THE COURT: That's fine. I mean, that's the kind of
25 thing we were looking for.

1 Were you in Boston on the 19th, the Friday of that
2 week? What I'm getting at is did you have to remain
3 behind -- within the building and so on?

4 THE JUROR: No. No, I was not at work that day.

5 THE COURT: You were home?

6 THE JUROR: Yeah.

7 THE COURT: And you did not have to shelter in place,
8 then?

9 THE JUROR: No, I did not.

02:30 10 THE COURT: Let's go to page 23 and Question 88.

11 Beginning with Question 88, we asked a series of questions to
12 try to understand whether the prospective jurors had views
13 about the death penalty and what they were. And in 88 we asked
14 for a general view. If you have any views on the death penalty
15 in general, what are they, and you said, "I'm not against the
16 death penalty but not for it either, case by case."

17 THE JUROR: That's right.

18 THE COURT: And the next question we asked if you
19 could place yourself on a scale from 1 to 10, where 1 was
02:31 20 someone strongly opposed, to believe the death penalty should
21 never be imposed, and 10 was someone strongly in favor who
22 believe it should be imposed whenever a defendant had been
23 convicted of intentional murder.

24 You put yourself at 5?

25 THE JUROR: That's right.

1 THE COURT: I guess that's consistent with 88? Was
2 that --

3 THE JUROR: Yeah, I think it's -- if you want me to
4 expound.

5 THE COURT: Yeah, go ahead.

6 THE JUROR: I think it's something that really does
7 need to be looked at seriously in a case by case. I don't
8 think it's ever a deterrent, but I think it has the potential
9 to provide justice for the victims if, you know, that's what
02:31 10 comes out in the trial.

11 THE COURT: Okay. If you go to the next page,
12 Question 90, rather than having you put yourself on a numerical
13 scale, we asked you to look at a series of formulations and see
14 if there was one that came close to representing -- or did
15 represent your view, and you circled E, said, "I'm in favor of
16 the death penalty but I could vote for a sentence of life
17 imprisonment without the possibility of release if I believed
18 that sentence was called for by the facts and the law in the
19 case."

02:32 20 THE JUROR: That's correct.

21 THE COURT: And so you would reserve judgment, is that
22 it, until you heard in a particular case all the circumstances?

23 THE JUROR: I believe so, yes.

24 THE COURT: You heard me describe the penalty phase
25 this morning, whether it be evidence presumably from the

1 government about things that made -- that aggravated the
2 offense, made it particularly serious.

3 THE JUROR: That's right.

4 THE COURT: And there would be evidence from the
5 defense of things that mitigated the offense, or mitigated the
6 penalty that you might think was appropriate. You'd be able to
7 consider all those things and make a judgment based on your
8 analysis of those things?

9 THE JUROR: Yes.

02:33 10 THE COURT: In the next -- on the next page, Question
11 95 at the bottom, we asked particularly about this case. If
12 you found this defendant guilty and you decided that the death
13 penalty was an appropriate punishment for him, could you
14 conscientiously vote for the death penalty, and you said "yes."

15 THE JUROR: Absolutely.

16 THE COURT: And the top of the next page is a related
17 question. If you found him guilty and you decided life in
18 prison without the possibility of release was the appropriate
19 punishment, could you conscientiously vote for life
02:33 20 imprisonment without the possibility of release, and you said
21 "yes" there as well?

22 THE JUROR: Yes, indeed.

23 THE COURT: Any follow-up?

24 MR. WEINREB: Good morning, sir.

25 THE JUROR: Good morning.

1 MR. WEINREB: I have no questions, but thank you.

2 MS. CONRAD: Good morning, sir. My name is Miriam
3 Conrad. I've one of the lawyers for Mr. Tsarnaev.

4 I'd like to go back to the -- Question 81 about
5 whether anyone you know was affected by the bombings or their
6 aftermath.

7 THE JUROR: Okay. Let me get to that.

8 THE COURT: It's page 21.

9 THE JUROR: Thank you.

02:34 10 MS. CONRAD: Sorry. Thank you.

11 And you told Judge O'Toole about a few people you knew
12 who were present. Can you tell us a little bit more about
13 that?

14 THE JUROR: Well, were they -- no, they weren't
15 present, but they were affected by it. They had to evacuate,
16 and they had to keep away from that area of the city for some
17 time.

18 MS. CONRAD: And so those are people you know who live
19 or work --

02:34 20 THE JUROR: They work nearby that area.

21 MS. CONRAD: When you say "that area," you mean --

22 THE JUROR: On Boylston Street.

23 MS. CONRAD: -- on Boylston Street?

24 Did they hear or see anything that day?

25 THE JUROR: To my knowledge, no. Thankfully, they

1 weren't there.

2 MS. CONRAD: And when the bombings happened, where
3 were you?

4 THE JUROR: I was at home.

5 MS. CONRAD: And did you have concerns about the
6 people you knew in the area?

7 THE JUROR: I did. And I actually gave them a call,
8 and I found that they weren't in the office on that day,
9 thankfully. So everyone was safe.

02:35 10 MS. CONRAD: Okay. And how long did it take before
11 you found out that everyone was safe?

12 THE JUROR: Not long. About 10, 15 minutes or so.

13 Again, the reason I put "I don't understand" is the nature of
14 the word "affected."

15 MS. CONRAD: Oh, sure. I understand. I'm just trying
16 to find out a little bit more about that.

17 THE JUROR: Sure.

18 MS. CONRAD: And you said, you know, that you felt
19 that everyone in Boston -- I think you said everyone in the
02:35 20 country was affected in some way.

21 THE JUROR: Absolutely.

22 MS. CONRAD: Can you tell us how you were affected by
23 those events?

24 MR. WEINREB: Objection.

25 THE COURT: Yeah, I don't think the question was

1 asking for what he thinks about the events, if that's --

2 MS. CONRAD: That's not what I asked.

3 THE COURT: I know. But I think he's already told
4 us -- it didn't have any direct personal effect.

5 THE JUROR: No.

6 THE COURT: Yeah. I think that's it.

7 MS. CONRAD: When you said you think everyone in the
8 country was affected, can you tell us what you meant by that?

9 MR. WEINREB: Objection.

02:36 10 THE COURT: Yeah. You don't have to answer it.

11 MS. CONRAD: You said that -- if I could turn to
12 Question 20 -- excuse me -- Question 77 on page 20.

13 THE JUROR: Okay.

14 MS. CONRAD: It looks like you gave this some thought,
15 which is a good thing. As the judge said, we want people to
16 tell us how they feel about these questions. But it also looks
17 like you changed your response from "unsure" to "yes" on guilt.

18 As you sit here today, what do you think is the
19 accurate answer to that question?

02:37 20 THE JUROR: "Yes."

21 MS. CONRAD: It's still "yes"?

22 THE JUROR: Yes.

23 MS. CONRAD: And can you tell us why you initially put
24 down "unsure"?

25 THE JUROR: I was thinking about the circumstances of

1 the case that I knew, and I was also writing on my lap, so it
2 got a little bit jumbled in there. But, no, I firmly believe A
3 would be "yes."

4 MS. CONRAD: Okay. And is the same thing true about
5 your response on B, about whether he's not guilty?

6 THE JUROR: Yes, that's correct.

7 MS. CONRAD: So you said that with respect to 77 as
8 far as whether you'd be able to put that aside, that you
9 would -- a more accurate answer would be "unsure." I'm sorry.
02:37 10 Did I misunderstand that?

11 THE JUROR: Forgive me. I'm not sure I'm following
12 you.

13 MS. CONRAD: All right. So if you would go to the
14 bottom of 77, to that question, it asks whether you would be
15 able to set aside your opinion, and I thought you explained to
16 the judge that --

17 THE JUROR: Yeah. No, I don't think I understood the
18 way this question was framed. I apologize. What I meant to
19 say by that is that I would have to -- it's a case-by-case
02:38 20 basis, my feelings on the death penalty.

21 MS. CONRAD: Okay. But this is -- if I could just ask
22 you to take a look at that. It's a different question.

23 THE JUROR: That he should not receive?

24 THE COURT: I don't think that's what she's asking.

25 MS. CONRAD: No, no, no, the bottom part that starts,

1 "If you answered yes."

2 THE COURT: Where you said you would be able to decide
3 on the evidence.

4 THE JUROR: Okay.

5 I don't think I understood that question. I
6 apologize. I stand by the statement that I told you today.

7 MS. CONRAD: But you had said that if the one option
8 had been "unsure," you would have selected that. So I just
9 wanted to understand what you meant by that.

02:38 10 THE JUROR: Okay.

11 I'm a little bit confused.

12 THE COURT: Okay.

13 THE JUROR: I'm sorry.

14 MS. CONRAD: Maybe I misunderstood myself. Maybe I
15 misheard.

16 I thought when the judge asked you about this part of
17 the question --

18 MR. WEINREB: Your Honor, I object at this point, and
19 I would request that the question be open-ended rather than
02:39 20 trying to create what he said and --

21 MS. CONRAD: It was going to be open-ended. It was
22 going to be open-ended.

23 MR. WEINREB: Yes, but it sounds like the premise of
24 the question is that he said something that he does not
25 remember saying.

1 THE COURT: Let me ask you to take your time and read
2 that "If you answered yes" paragraph -- yes, right there -- and
3 tell us what today you think your answer to that question would
4 be.

5 (Pause.)

6 THE JUROR: Okay. Then I think yes, I could set that
7 aside.

8 MS. CONRAD: And you're confident about that?

9 THE JUROR: Yes. Sorry for the mixup.

02:40 10 MS. CONRAD: On Question 90 on page 24 you selected
11 the response E which indicates you're in favor of the death
12 penalty, correct?

13 THE JUROR: You know what? That was the closest I
14 thought to, you know, my true feelings on the subject.

15 MS. CONRAD: Sure. And that's all we're trying to
16 find out, is your true feelings.

17 So would you say you lean slightly more toward the
18 death penalty?

19 THE JUROR: Possibly.

02:40 20 MS. CONRAD: And you said that -- in response to
21 Question 93 on page 25 that one of the things it would depend
22 on, that is, whether the death penalty is more -- life without
23 parole is more severe, is the person's world view. Can you
24 tell me a little bit more about that?

25 THE JUROR: Well, I think just philosophically it's

1 tough to say what would be a worse punishment for someone. A
2 person might view life imprisonment as worse than death, so
3 it's hard to say.

4 MS. CONRAD: And if -- and when you say the "person,"
5 you mean the defendant or the --

6 THE JUROR: Any defendant, yeah.

7 MS. CONRAD: And if the person viewed that as worse,
8 would that change -- how would that affect your view of whether
9 the death penalty would be appropriate?

02:41 10 MR. WEINREB: Objection.

11 THE COURT: Yeah. I don't think we need to have that
12 answer.

13 THE JUROR: Okay.

14 MS. CONRAD: I see here that you're a writer in your
15 spare time?

16 THE JUROR: Sparingly, but yes.

17 MS. CONRAD: Excuse me?

18 THE JUROR: Sparingly, yes.

19 MS. CONRAD: And what types of things do you write
02:42 20 about?

21 THE JUROR: Nature, poems.

22 MS. CONRAD: May I have a moment?

23 (Counsel confer off the record.)

24 MS. CONRAD: Would you be able, in deciding whether to
25 vote for the death penalty in any given case, not necessarily

1 this case, to give -- to consider things about not just the
2 crime but about the defendant, such as his background and so
3 forth?

4 THE JUROR: Yes.

5 MS. CONRAD: Would you tend to focus primarily,
6 however, on the crime?

7 MR. WEINREB: Objection.

8 THE COURT: Sustained.

9 MS. CONRAD: If you were not to get paid by your
02:43 10 employer, would sitting on this jury be a hardship for you?

11 THE JUROR: Absolutely.

12 MR. WEINREB: Objection.

13 THE COURT: No, you may answer it.

14 THE JUROR: Absolutely.

15 MS. CONRAD: And you simply don't have any information
16 about whether or not you would get paid?

17 THE JUROR: I didn't look into the matter, no. No, I
18 don't.

19 MS. CONRAD: All right. Thank you very much.

02:43 20 THE JUROR: All right.

21 THE COURT: Thank you, sir.

22 THE JUROR: All right.

23 (The juror exits the courtroom.)

24 MS. CONRAD: Your Honor, before he leaves, with a
25 juror like this, can we ask them to find out? I don't think we

1 want to get them seated and then find out they aren't going to
2 get paid.

3 THE COURT: I think -- yeah, I guess we can.

4 MR. WEINREB: Your Honor, in the past when this has
5 come up, the Court's taken the view these things will --

6 THE COURT: That tends to be my view, that if they
7 weren't, they would know about it.

8 MR. WEINREB: And I don't think we should have one
9 rule for some jurors, ones the defense would like to get rid of
02:44 10 and not ones for the government.

11 MS. CONRAD: I think we just did. There was an
12 earlier juror who indicated she didn't know if she would get
13 paid.

14 MR. WEINREB: No.

15 THE COURT: No, she was an hourly --

16 MS. CONRAD: But hourly doesn't --

17 THE COURT: Anyway, he can go.

18 MS. CONRAD: And, your Honor, may I just also be heard
19 on this last bit, the first questions I asked? I frankly don't
02:44 20 understand why asking how someone, a prospective juror, was
21 affected by the bombings is not an appropriate question.

22 THE COURT: Because I think he answered what the
23 question was getting at, which was a more direct kind of effect
24 than he had various thoughts about the matter.

25 MS. CONRAD: But I --

1 THE COURT: So...

2 MS. CONRAD: It seems to me "how you were affected" is
3 the fundamental question.

4 THE COURT: Okay.

5 MS. CLARKE: Your Honor, I think -- I'm sorry.

6 THE COURT: Before the --

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

02:45 10 MS. CLARKE: I just wanted to alert you to it.

11 THE COURT: I appreciate that.

12 I don't know if you know, I was given a stack through
13 the clerk, so I've gone through them quickly. And I'll ask him
14 about it. It's fairly remote and small, but I'll ask him about
15 it.

16 THE CLERK: Juror No. 376.

17 THE JURY CLERK: Juror 376.

18 (The juror enters the courtroom.)

19 THE CLERK: Sir, over here, if you would. Have a
02:46 20 seat.

21 Do me a favor, keep your voice up and speak into the
22 mic. It's adjustable so you can move it around, and make sure
23 everyone around the table can hear you, okay?

24 THE JUROR: All right.

25 THE COURT: Good morning.

1 THE JUROR: Good morning.

2 THE COURT: Since you were last here, have you been
3 able to avoid discussion of the case with people?

4 THE JUROR: Yes.

5 THE COURT: And also as much as possible avoid any
6 media exposure?

7 THE JUROR: Absolutely, yes.

8 THE COURT: So that's the questionnaire you filled
9 out, and we're going to follow up on some of the questions you
02:47 10 gave. We've been asking everybody about their employment. It
11 says you are a delivery driver for Pepsi?

12 THE JUROR: Yes.

13 THE COURT: And you've been doing that for a good ten
14 years or more?

15 THE JUROR: Yes, ten years.

16 THE COURT: We also asked -- if you want to look on
17 page 5, we set forth the schedule of the case including the
18 likely length of the case. If you were to serve for three or
19 four months, would that have an impact on your income or your
02:47 20 ability --

21 THE JUROR: Oh, my income. I wouldn't lose my job,
22 but I wouldn't want to be out that long if I didn't have to be.

23 THE COURT: Well, what would the impact --

24 THE JUROR: I could work my schedule around it a
25 little bit but...

1 THE COURT: You could? Tell us how you could do that.

2 THE JUROR: I'm just typically Monday through Friday.

3 I could -- I know Fridays they said they weren't going to be in
4 court.

5 THE COURT: That's right.

6 THE JUROR: So I could probably work Friday, Saturday,
7 Sunday if I had to to make up some of the time.

8 THE COURT: Well, you know, I want to be realistic
9 about it. We don't want to put you in a bind where you really
02:48 10 are making a huge sacrifice; on the other hand, if you think
11 you can do both, that's -- and not be, you know, so affected
12 that it would be really hurtful to you, so we kind of -- we
13 can't assess it as well as you can assess it, I guess.

14 THE JUROR: Yeah. I know you get somewhat compensated
15 too.

16 THE COURT: Not very much, but you do.

17 THE JUROR: My wife pays the mortgage mostly, so I
18 can't really...

19 THE COURT: All right.

02:48 20 THE JUROR: I mean, I don't know what to say. She's
21 more the income-earner than I am, so...

22 THE COURT: So are you -- do you have a regular route
23 that you deliver?

24 THE JUROR: Yeah. Yeah.

25 THE COURT: So, for example, you have a convenience

1 store or something you deliver things to?

2 THE JUROR: Yeah.

3 THE COURT: Do you go to the same store on a regular
4 basis?

5 THE JUROR: Pretty much, see the same people on a
6 regular basis. Same route, same area. I actually deliver down
7 in New Bedford, Dartmouth area is my route, that area.

8 THE COURT: So you don't think it would be a problem
9 for you. Is that what you're telling me?

02:49 10 THE JUROR: I have to work something out, yeah, I
11 guess. No, not 100 percent.

12 THE COURT: All right. I guess here's why we ask the
13 question up-front, and really up-front. It's one of the first
14 questions we ask. We don't want it to become a problem later.
15 If you're sitting and then all of a sudden you say, "I made a
16 bad decision here," we'd rather not have that situation. On
17 the other hand, if you think it's the kind of thing you think
18 you can stand, that's -- and are willing to do it.

19 THE JUROR: I thought you didn't have much choice.

02:50 20 (Laughter.)

21 THE JUROR: Then everybody could just say, "No, sure,
22 I can't afford it," then you just -- I thought that was
23 basically someone -- you don't have a choice. You got to do
24 what you got to do. So, I mean, I don't know what else...

25 THE COURT: There are limits. You don't have to do it

1 in the circumstances that would make it a severe hardship. And
2 that's really the question. If you think it would be a severe
3 hardship and cost you earnings that, you know, would really be
4 significant to you, then we won't ask you to do it. On the
5 other hand, if you think you can do it and also keep things
6 running by an adjusted schedule, we'd be happy to have you.

7 THE JUROR: Yeah, it definitely would be hard. But, I
8 mean, I don't know. It would be hard as far as schedule. I
9 mean, I take the kids to hockey and that kind of stuff, but,
02:51 10 you know, it's just...

11 THE COURT: Yeah. Okay. Tell me about taking the
12 kids to hockey. How often do you do that?

13 THE JUROR: I got a six-year-old. I take him twice a
14 week.

15 THE COURT: When --

16 THE JUROR: He goes Mondays and Wednesdays. He goes
17 to swim on Saturdays.

18 THE COURT: What time, after school?

19 THE JUROR: Yeah, after school. Five o'clock. That
02:51 20 kind of stuff.

21 THE COURT: Well, let's go on with the --

22 THE JUROR: Sure.

23 THE COURT: -- other questions.

24 THE JUROR: I didn't write very much down. I wasn't
25 expecting to be called back, honestly.

1 THE COURT: All right. Sometimes it's difficult to
2 read a juror's writing.

3 THE JUROR: Sure.

4 THE COURT: Page 6 we asked for your -- you know,
5 whether you had -- whether you were married and, if so, what
6 your spouse did.

7 THE JUROR: My wife's occupation? Accountant.

8 THE COURT: Accountant?

9 THE JUROR: Yeah.

02:51 10 THE COURT: Tell us about that, what --

11 THE JUROR: Her background's in accounting. She does
12 more finance now.

13 THE COURT: Is she self-employed or work for somebody?

14 THE JUROR: No, no, she works for -- it's a
15 London-based company, Inventus. She actually just traveled to
16 France a week ago for work. So she's more of a lead finance,
17 team financier.

18 THE COURT: Okay.

19 Could we cut the audio for a minute?

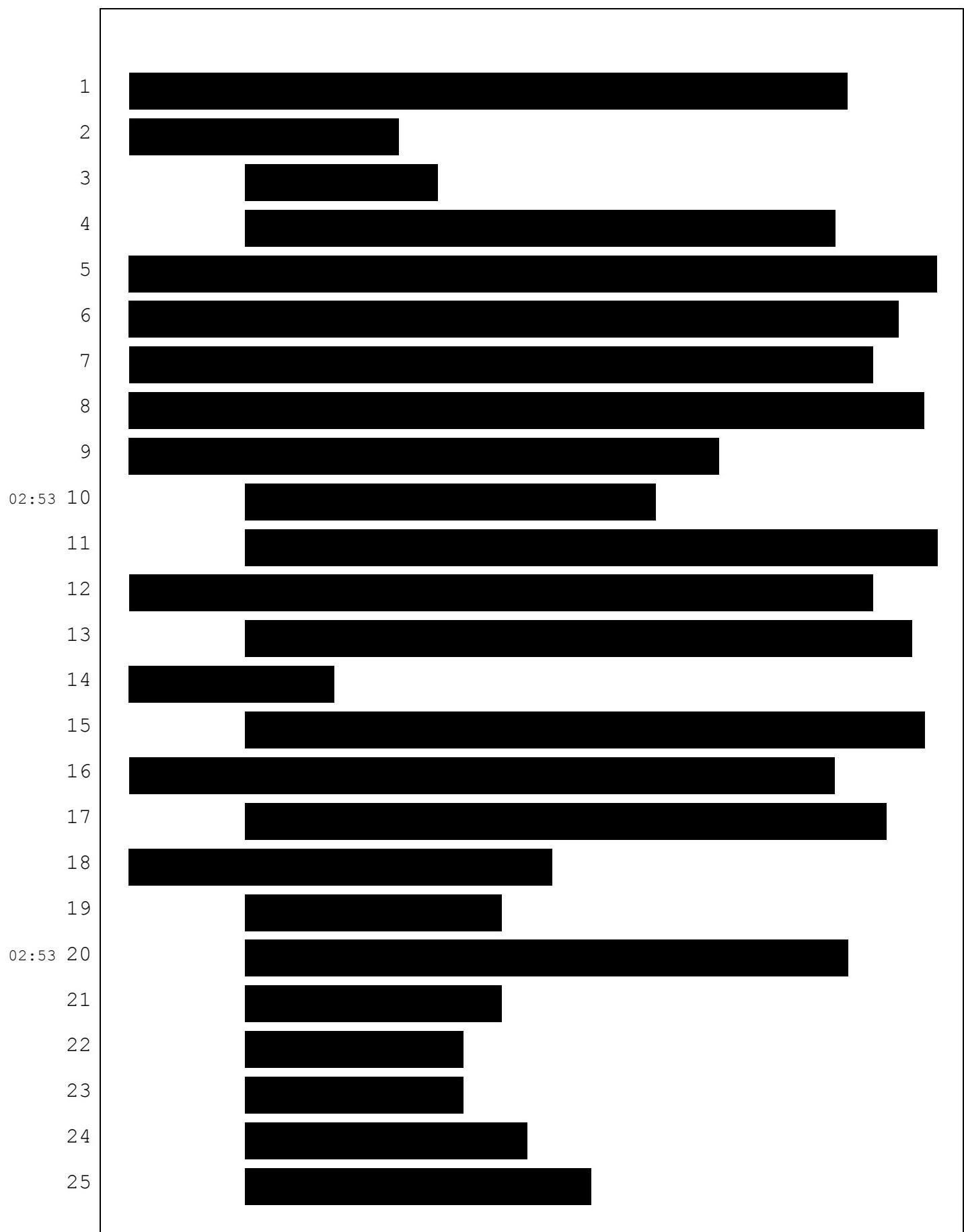
02:52 20 MR. DOREAU: Audio cut.

21 (Discussion at sidebar and out of the hearing of the
22 public:)

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]



1

[REDACTED]

THE CLERK: Back on.

2

MR. DOREAU: Audio and video on.

3

THE JUROR: I didn't even realize that still showed
4 up.
5

6

(In open court:)

7

THE COURT: Let me ask you to look at page 20 and
8 Question 77.

9

THE JUROR: Yup.

02:54 10

THE COURT: In that question we asked jurors whether
11 you'd seen or read anything in the news media that led you to
12 have an opinion now -- or when you filled out the questionnaire
13 and now -- that the defendant is guilty or not and, if so,
14 whether he should receive the death penalty or not, and you
15 checked "unsure" as to whether you had an opinion that he was
16 guilty and also "unsure" as to the penalty. You checked "no"
17 as to whether you had an opinion that he was not guilty.

18

I wonder if you can tell us what you were thinking
19 when you made those answers.

02:55 20

THE JUROR: As far as if -- on the first one, please
21 say again or --

22

THE COURT: Yeah. So in Part A it says based on
23 things you'd seen in the media or otherwise had you formed an
24 opinion that the defendant was guilty, and you checked
25 "unsure."

1 THE JUROR: Yes. If I was unsure he was guilty? You
2 can't go just by what you see in the media; you have to go by
3 what you know -- knowing of the case. I mean, I'm not
4 unsure of -- sure, you know, what the trial would be like.

5 THE COURT: All right. So you probably understand
6 that a person who's accused of a crime by the government is
7 presumed to be innocent, or not guilty, unless the government
8 proves the defendant guilty at trial by producing enough
9 evidence to convince the jury of that fact beyond a reasonable
02:56 10 doubt.

11 Do you understand that --

12 THE JUROR: Yes. Yes.

13 THE COURT: -- basic principle?

14 THE JUROR: Yeah.

15 THE COURT: What the question is getting at is -- and
16 it may be understandable that people have things that they've
17 seen in the media that gives them some impression about what
18 happened, but the question is whether you'd be prepared to
19 reserve judgment and make your judgment based on the trial
02:56 20 evidence and not on other ideas or information you had from
21 other sources.

22 THE JUROR: Absolutely.

23 THE COURT: And so if you thought on any of the
24 various charges that it made -- if you thought the government
25 had failed to prove the defendant guilty by the evidence at

1 trial, would you be prepared to vote to find him not guilty?

2 THE JUROR: Absolutely.

3 THE COURT: Okay. Now, as to the C and D, that asked
4 about the death penalty. If you'd turn to page 23, we asked a
5 series of questions to see if we could get jurors' attitudes
6 about the death penalty. In Question 88 we asked if you had
7 any views about the death penalty in general, what are they,
8 and you said, "I think it is fair."

9 Do you want to tell us a little bit more about that?

02:57 10 THE JUROR: I think there are so many processes you
11 got to go through to get a death penalty sentence that I think
12 by that time -- I mean, it's not like 50 years ago, you didn't
13 have all the different -- I don't know, maybe all the different
14 DNA and all that different evidence that is presented now, that
15 I think it's more -- I don't know. I think the outcome would
16 be more -- you know, I don't know what the word is I'm
17 searching for. More, you know, reasonable to say if everyone
18 sees that that's the evidence then, yeah, maybe the evidence is
19 fair.

02:57 20 THE COURT: Okay. In the next question we asked you
21 to circle a number that you thought applied to you on a scale
22 from 1 to 10 where 1 reflects a belief that the death penalty
23 should never be imposed and 10 reflects a belief it should be
24 imposed whenever the defendant is convicted of a murder, and
25 you selected 6. Can you tell us anything about why you

1 selected 6?

2 THE JUROR: I don't know. I think it depends on the
3 person's background, if there was other reasoning behind why
4 they committed a crime or, you know, other circumstances, you
5 know, their upbringing. Maybe something happened to them that
6 maybe they just didn't have a fair shake either, you know, type
7 of thing, you know, kind of getting a bad rap, you know, type
8 of thing, they shouldn't have -- it's not always cut and dry, I
9 don't think, you know? There's a little bit of wiggle room in
02:58 10 everything, I guess.

11 THE COURT: Okay. Turn to the next page, 24, Question
12 90. Question 90 sets forth a number of different positions
13 somebody might have on the death penalty and asks if there's
14 one that you thought would best describe your own view, and you
15 selected D. It says, "I'm not for or against the death
16 penalty. I could vote to impose it or I could vote to impose a
17 sentence of life imprisonment without possibility of release,
18 whichever I believed was called for by the facts and the law in
19 the case."

02:59 20 THE JUROR: Yup.

21 THE COURT: Do you think that represents your view of
22 the matter?

23 THE JUROR: Yes. I mean, my personal view is I
24 wouldn't want to be in jail for the rest of my life. So if
25 that was the case, I would prefer to have the death penalty.

1 If I was in those shoes, I would rather be -- than, you know,
2 spend the rest of my life in jail. So that's how I feel about
3 it.

4 THE COURT: Well, let me just come back to statement
5 D.

6 THE JUROR: Yup.

7 THE COURT: That indicates that you don't have a
8 strong preconceived idea in either direction; that you're open
9 to either --

03:00 10 THE JUROR: I'm open to either/or. I mean, I would
11 prefer -- type person to prefer not to spend the rest of my
12 life in jail, but if that's what the person would want, that's
13 what they would want. I mean, I can't judge somebody else's
14 feeling.

15 THE COURT: Okay. Let me ask you to go to the next
16 page at the bottom, Question 95. That asks about this
17 defendant. If you found him guilty and you decided that the
18 death penalty was the appropriate punishment for him, could you
19 conscientiously vote for the death penalty, and you said "yes."

03:00 20 THE JUROR: Yeah.

21 THE COURT: Okay. On top of the next page we asked
22 the related question. If you found the defendant guilty and
23 decided instead that life imprisonment without the possibility
24 of release was the appropriate punishment, could you
25 conscientiously vote for life imprisonment?

1 THE JUROR: Yeah, absolutely.

2 THE COURT: Follow-up?

3 MR. WEINREB: Good morning.

4 THE JUROR: Good morning.

5 MR. WEINREB: My name's Bill Weinreb. I'm one of the
6 prosecutors.

7 I wanted to follow up for a minute on your answer to
8 Question 88, which is on page 23.

9 THE JUROR: Yup.

03:01 10 MR. WEINREB: So if -- just so I'm clear, so if a
11 defendant were -- you heard the judge explain that there will
12 be two phases in this trial. In the first phase it will just
13 be about whether the defendant is guilty or not guilty of any
14 of the crimes he's charged with, and at the end of that phase
15 if the jury finds him guilty of one of the charges that's a
16 capital crime, that carries a possible sentence of the death
17 penalty, then you have a whole second phase to determine if the
18 death penalty is the appropriate sentence.

19 Do you understand all that?

03:01 20 THE JUROR: Yeah, absolutely. Yeah.

21 MR. WEINREB: So the question is: Going into that
22 phase, that second phase, would you have an open mind -- not
23 necessarily in this case, but in any case -- would you have an
24 open mind about whether the person should get the death penalty
25 or not depending on what the evidence was?

1 THE JUROR: Absolutely, yeah.

2 MR. WEINREB: All right. And the judge instructed you
3 earlier that you'll hear evidence of aggravating factors.
4 That's evidence that the government believes makes this a case
5 where the death penalty is appropriate. And then you'll also
6 hear evidence of mitigating factors. That's evidence that the
7 defense believes is a case that makes life imprisonment the
8 appropriate sentence, because those are the only two choices.

9 And the question is: Could you give meaningful
03:02 10 consideration to both the aggravating factors and the
11 mitigating factors and weigh them in determining ultimately
12 what you think is the appropriate sentence?

13 THE JUROR: Yeah, I believe I could. Yeah. I
14 don't -- I don't see why not. I think it's appropriate to hear
15 from both sides and kind of go from there what -- you know.

16 MR. WEINREB: Okay. Thanks very much.

17 THE JUROR: Yeah, sure.

18 MS. CLARKE: Good morning.

19 THE JUROR: Good morning.

03:03 20 MS. CLARKE: My name is Judy Clarke. I'm one of the
21 lawyers for Mr. Tsarnaev. And I just wanted to follow up on a
22 few questions.

23 THE JUROR: Sure.

24 MS. CLARKE: I guess I was a little concerned, and I
25 want to make sure you have your chance to tell us how much of a

1 hardship serving would be because, as I heard you, you have a
2 lot of -- you have care responsibilities for a child, a wife
3 that travels and a job.

4 THE JUROR: Yeah.

5 MS. CLARKE: And I think really what the judge was
6 trying to get at is: Is that going to be a hardship on you to
7 be sitting in here for four months?

8 THE JUROR: Yeah, it will be difficult. Yeah. I want
9 to say, yeah, obviously it will be difficult. I mean, it's --
03:03 10 I mean, I wouldn't lose my house; I would lose my income, that
11 type of stuff. But, yeah, I probably will have to make less
12 fishing trips in the summertime or a couple less vacations, not
13 go to Disney in the fall. That kind of stuff, yeah.

14 MS. CLARKE: So it doesn't sound like it's too much
15 for you to bear?

16 THE JUROR: Yeah. I mean...

17 MS. CLARKE: Because it's your shot at telling us.

18 THE JUROR: I mean, if I would have to lose work for
19 four months, I think I would probably survive, not that I -- it
03:04 20 would be tight. It would be a struggle, but, yeah, financially
21 we could make it.

22 MS. CLARKE: Okay. Let me turn to Question 77 on page
23 20 again.

24 THE JUROR: Yeah.

25 MS. CLARKE: And you marked -- I think that you talked

1 about this a little bit, but you marked "unsure" on guilty and
2 "unsure" on the death penalty. Have you ever had an opinion
3 about either one of those, Mr. Tsarnaev's guilt or whether or
4 not he should get the death penalty?

5 THE JUROR: On him particularly? No. On other
6 people, yeah.

7 MS. CLARKE: On other people in the news?

8 THE JUROR: Well, yeah. I mean like --

9 MR. WEINREB: Objection. I don't think he needs to
03:05 10 tell us who he thought other --

11 THE COURT: Yeah, I think that's right. I don't think
12 we need it.

13 MS. CLARKE: So on Mr. Tsarnaev, you've never formed
14 an opinion, either before filling out the survey, the
15 questionnaire, or after?

16 THE JUROR: Honestly? Yeah. I mean, you -- probably,
17 yeah, from what you seen in the news, yeah, I kind of -- I
18 wouldn't say formed an opinion, but from what you see in the
19 news at that time, you would think, yeah, he was the person
03:05 20 that was there, involved.

21 MS. CLARKE: Okay. Okay. And regarding the death
22 penalty?

23 THE JUROR: Oh, no, not at all.

24 MS. CLARKE: Based on what you've seen or heard in the
25 news?

1 THE JUROR: No, no, not on the death penalty. As far
2 as involved, yes.

3 MS. CLARKE: Okay. You mentioned -- let me see if I
4 can find it -- on page 19, Question 70, up at the top of page
5 19 --

6 THE JUROR: Yeah.

7 MS. CLARKE: -- that you listen to the Howie Carr Show
8 two or three times a week?

9 THE JUROR: Yeah.

03:06 10 MS. CLARKE: Have there been any presentations on that
11 show about this case or about the Tsarnaev family?

12 THE JUROR: No, no. He's just -- not that I know of.
13 I read the *Herald*, you know, like his show. Not that I know
14 of.

15 MS. CLARKE: And have you heard him talk about or read
16 anything that he's written about the Tsarnaev family?

17 THE JUROR: Yes.

18 MS. CLARKE: And what is that?

19 THE JUROR: What I've read about his family?

03:06 20 MS. CLARKE: Yes.

21 THE JUROR: Or what Howie's talked about his family?

22 MS. CLARKE: Yes.

23 THE JUROR: I think he's mentioned his parents'
24 background and stuff.

25 MS. CLARKE: Can you tell us what you remember about

1 that?

2 THE JUROR: I know something that he said his mother
3 went back to -- or got caught shoplifting or something at the
4 mall, or one of the family members. So that's what I remember.

5 MS. CLARKE: Does that influence you in any way?

6 THE JUROR: No, not really.

7 MS. CLARKE: What was your reaction when you heard
8 that?

9 THE JUROR: More comical.

03:07 10 MS. CLARKE: More comical? Is that sort of what the
11 Howie Carr Show --

12 THE JUROR: Yeah, absolutely. If you're from Boston,
13 you know Howie Carr.

14 MS. CLARKE: You know Howie Carr?

15 THE JUROR: Absolutely.

16 MS. CLARKE: Even if you're not from Boston I think
17 you know Howie Carr.

18 THE JUROR: Okay.

19 MS. CLARKE: Okay. Let me ask you to turn to 88 again
03:07 20 at page 23. I keep flipping you back and forth in the
21 questionnaire. It's a test of dexterity.

22 THE JUROR: Absolutely.

23 MS. CLARKE: And when you talked to the judge about
24 what you meant by "I think it's fair," it sounded like you
25 thought it was fair because of the ability to be certain as to

1 someone's guilt? Am I hearing you right?

2 THE JUROR: Yeah, I don't think it's -- I think it's
3 fair because of the ability now that you can prove it. I mean,
4 I think if you can prove something that's really -- the person,
5 you know, absolutely did it and, you know, there's no, you
6 know, 100 percent -- you can't say absolutely fair, then, yeah,
7 I think it's somewhat fair, I guess. I wouldn't want to be in
8 jail for life, so...

9 MS. CLARKE: And how does -- you've said that a few
03:08 10 times, and I'm sure there are people that share that opinion.
11 How does that affect you sitting in a capital trial, your own
12 view that --

13 THE JUROR: I don't really think it affects me in any
14 kind of way. It's just a personal belief. I think everybody
15 believes -- just like if you were sick and you were on -- you
16 want to take life support away, it's just the way you feel, you
17 wouldn't want to be -- I wouldn't want to be on life support
18 for the rest of my life. You know, quality of life. It's
19 basically quality of life is what I look at.

03:08 20 MS. CLARKE: Sure. You're just expressing your
21 personal opinion how it would affect you?

22 THE JUROR: Yeah.

23 MS. CLARKE: And the idea that the death penalty is
24 fair because we can be more certain nowadays, that kind of
25 makes it sound like you're more focused on the crime in making

1 your decision about the death penalty. Did I get that wrong?

2 THE JUROR: Focused on the crime? More the crime than
3 the individual, I would say. More -- I mean, I think
4 it's -- yeah, I guess you could focus more on the crime than on
5 the person. That's my thought on it.

6 MS. CLARKE: Well, in a capital trial where we don't
7 get to the penalty phase unless the person has been convicted
8 of a deliberate, intentional murder, no excuse, no
9 justification, right --

03:09 10 THE JUROR: Okay.

11 MS. CLARKE: -- so in that kind of situation, where
12 would you be on the death penalty?

13 MR. WEINREB: Objection, your Honor, because I think
14 the no excuse/no justification tends to conflate questions of
15 the -- those are -- she's using them in the legal sense. But
16 when it comes to the penalty phase, those will be argued as
17 being mitigating factors.

18 THE COURT: Well, okay. I think -- I don't know if I
19 agree with all of that, but I do think the question could be
03:10 20 confusing to a layperson. Maybe you could ask it again.

21 MS. CLARKE: I guess what I'm trying to figure out is,
22 you know, some people will say, "If it was self-defense, then I
23 wouldn't give the death penalty." Of course if there was
24 self-defense it wouldn't be --

25 THE JUROR: A death penalty case. Understandable

1 MS. CLARKE: Right. It wouldn't be deliberate and
2 intentional murder, right?

3 THE JUROR: Yes.

4 MS. CLARKE: So the question is: If there is a
5 conviction of a deliberate, intentional, premeditated murder,
6 where would you come out?

7 THE JUROR: Honestly, I would come out if -- probably
8 for it if -- if -- if the person -- I would say if the person
9 wants it. But you can't say you want or don't want the death
03:11 10 penalty. But I would probably go for it. Yeah, I would.

11 MS. CLARKE: Based on the crime alone?

12 MR. WEINREB: Objection.

13 THE COURT: Yeah, I think that's too leading.

14 My --

15 MS. CLARKE: I think I would let the Court --

16 THE COURT: Earlier you heard me say that in the
17 penalty phase -- of course you have somebody who's already been
18 convicted, is found guilty by the jury of intentional murder,
19 right? That's the premise. You don't get to the penalty phase
03:11 20 unless you have a person convicted of that.

21 THE JUROR: Absolutely.

22 THE COURT: So then the question is: What is the
23 appropriate punishment? And as I said, there will be a
24 presentation by the government of things that aggravate the
25 offense and therefore call for maybe the more serious penalty,

1 and there will be a presentation by the defense -- did I say by
2 "the defense"? By the government if I said that wrong --
3 aggravating by government, mitigating by the defense.

4 THE JUROR: It's just hard to see how you would feel
5 about it at that point after you've gone through. You don't
6 know.

7 THE COURT: I think the question is: If you're
8 considering all of that, are you thinking about the events of
9 the crime itself alone, or are you thinking about the
03:12 10 individual and what that person deserves or doesn't deserve
11 alone based on their characteristics, or are you thinking about
12 both things as balancing against each other, I guess? Do you
13 understand what I'm saying?

14 THE JUROR: Yeah, I understand. It's just you can't
15 make that determination until you've kind of gone -- kind of
16 known more about what was behind, you know, the circumstances
17 of everything. I mean, it's hard to say --

18 THE COURT: Well, earlier I think you said something
19 about upbringing and things like that. Is that a category of
03:12 20 things you might --

21 THE JUROR: Yeah. I mean, I wouldn't say
22 "upbringing." I mean, yeah, I mean, if you was kind of beaten
23 24 hours a day and stuck in a closet for, you know, all your
24 life, that's kind of -- you're going to -- that's...

25 (Pause.)

1 MS. CLARKE: Thank you very much.

2 THE JUROR: That's fine. Thank you.

3 THE COURT: All set? All right. Thank you. Just
4 leave the questionnaire there.

5 (The juror exits the courtroom.)

6 THE CLERK: Juror No. 379.

7 THE JURY CLERK: Juror 379.

8 (The juror enters the courtroom.)

9 THE CLERK: Ma'am, over here. Have a seat. And if
03:14 10 you could do me a favor and keep your voice up and speak into
11 the mic so everyone around here can hear you, okay? The mic is
12 adjustable so you can move it around.

13 THE JUROR: Okay.

14 THE COURT: Good morning.

15 THE JUROR: Good morning.

16 THE COURT: Since you were last here, have you been
17 able to avoid any discussion of the case, substantively, with
18 anyone?

19 THE JUROR: Uh-huh.

03:14 20 THE COURT: You have to say yes or no for the court
21 reporter.

22 THE JUROR: Yes.

23 THE COURT: And have you also been able to avoid media
24 reporting about the case, largely?

25 THE JUROR: Largely.

1 THE COURT: Yeah. If you see it, you turn away from
2 it?

3 THE JUROR: Pretty much.

4 THE COURT: Tell us about your employment.

5 THE JUROR: I'm a fitness instructor and a personal
6 trainer.

7 THE COURT: At a health club in a hotel?

8 THE JUROR: Health club, yes.

9 THE COURT: And what's your schedule like?

03:15 10 THE JUROR: I have private clients a few days a week
11 at another facility where I teach yoga, and I have two classes
12 a week in the evening.

13 Do you want the specific times or --

14 THE COURT: Just a general idea of your schedule,
15 that's all.

16 THE JUROR: And my other clients are just varied based
17 on when I have people for personal training.

18 THE COURT: Do you have regular hours at the health
19 club where you --

03:16 20 THE JUROR: Yes, I do.

21 THE COURT: -- are a fitness instructor?

22 THE JUROR: About ten hours a week.

23 THE COURT: That, of course, is the questionnaire that
24 you filled out before. And so we're following up on some of
25 the things -- I just want to ask you if you'd look at page 5,

1 Question 10. In there we set out what we anticipate what the
2 schedule for the case would be. And it would likely be a
3 lengthy case, may last several months. We asked if it would be
4 a special hardship on you to serve on that schedule and you
5 said "no."

6 I'm just asking in light of what you told us about
7 your work and the hours and so on, would it be difficult for
8 you to maintain your work and serve on the case or could you
9 rearrange your hours and --

03:16 10 THE JUROR: I don't know why I put "no." I must have
11 been in a rush to get out. It's a huge -- it would be very
12 difficult. I have a lot of people that rely on me. I also
13 volunteer through the Council on Aging and bring older people
14 to medical appointments, and they completely rely on me. So it
15 would be very difficult. And not to mention my husband owns
16 his own business, so we rely on this money that I would bring
17 in when I teach my classes and things, so I don't know why I
18 put "no."

19 THE COURT: Okay. All right. Thank you. That's it.

03:17 20 THE CLERK: Just leave that right here, ma'am.
21 Thanks.

22 (The juror exits the courtroom.)

23 THE CLERK: Juror No. 385.

24 THE JURY CLERK: Juror No. 385.

25 (The juror enters the courtroom.)

1 THE CLERK: Ma'am, over here, if you would. Have a
2 seat. Yeah, right over here.

3 And if you would do me a favor, keep your voice up,
4 speak into the mic so everyone around here can hear you, all
5 right?

6 THE JUROR: Okay, I'll try.

7 THE COURT: Good morning.

8 THE JUROR: Good morning.

9 THE COURT: Since you were last here, have you been
03:18 10 able to avoid any discussion of the case with other people?

11 THE JUROR: Yes.

12 THE COURT: And also as much as possible avoid reading
13 or hearing any media reports on the case?

14 THE JUROR: Yes.

15 THE COURT: So that's the questionnaire that you
16 filled out. We all have copies, and we're going to follow up
17 on some of the answers you gave, all right?

18 You were born in Moscow, Russia?

19 THE JUROR: Yes.

03:19 20 THE COURT: And lived there until the early '90s, I
21 guess?

22 THE JUROR: 1990 we came here. 25 years ago.

23 THE COURT: I assume you speak and understand Russian?

24 THE JUROR: Oh, yeah.

25 THE COURT: Let me ask you about your employment.

1 Tell us what you do and for whom.

2 THE JUROR: I'm epidemiologist analyst.

3 THE REPORTER: I'm sorry?

4 THE JUROR: I'm epidemiologist analyst. I do medical
5 research. My accent. I'm sorry.

6 And I do research for Veteran Affairs now, the
7 government.

8 THE COURT: If you look at page 10 of the
9 questionnaire --

03:20 10 THE JUROR: Yes?

11 THE COURT: -- that's where we -- in 26 at the top, we
12 ask you to list your employment. And the VA, the Veterans
13 Administration, is the top one. What's the next word?

14 THE JUROR: "MAVERIC." This is the name of the
15 research institute. Massachusetts Veteran Research Institute.

16 THE COURT: I see. Okay. And where's that located?
17 What town, what city?

18 THE JUROR: Here in Boston. In Jamaica Plain.

19 THE COURT: Okay. Oh, at the Jamaica VA?

03:20 20 THE JUROR: Yes. I work not far from there.

21 THE COURT: And before that you worked -- is that a
22 private company?

23 THE JUROR: Optima. It's part of the -- it's also the
24 same thing, medical research, but Optima was a big insurance
25 company under the umbrella of United Care, I think.

1 THE COURT: Okay. All right. And then before that
2 you were -- is it BWH? Is that Brigham and Women's Hospital?

3 THE JUROR: Yes.

4 THE COURT: Doing similar work?

5 THE JUROR: Yes.

6 THE COURT: Let me go back to -- well, you don't
7 necessarily have to look. Page 6. Your husband is also a
8 statistical programmer?

9 THE JUROR: Yes.

03:21 10 THE COURT: Where does he work?

11 THE JUROR: Brigham and Women's. About 20 years
12 there.

13 THE COURT: And what kind of work does he do?

14 THE JUROR: The same.

15 THE COURT: Give us an idea, what is it?

16 THE JUROR: This is medical research, what they do at
17 Brigham, and he is a leading programmer -- statistical
18 programmer.

19 THE COURT: Does he work across departments, that is,
03:21 20 medical departments? You said you were in epidemiology.

21 THE JUROR: Yes.

22 THE COURT: Is he in a particular --

23 THE JUROR: He is in general medical -- I think a
24 general medical department, but they do research, medical
25 research. He works with doctors, but he's not a doctor. He's

1 close, a statistician.

2 THE COURT: Okay. We asked about -- and this is at
3 the bottom of page 10 and the top of page 11 -- about the use
4 of social media, like Facebook and stuff like that. You don't
5 use any of those things?

6 THE JUROR: I don't use Facebook. But I do online,
7 check news regularly.

8 THE COURT: Regular --

9 THE JUROR: Yeah. I'm pretty aware of what happened
03:22 10 in the world.

11 THE COURT: That just reminds me. Do you still have
12 relatives living in Russia?

13 THE JUROR: Not too much. I mean, I have one, but
14 more friends than relatives.

15 THE COURT: People you still stay in contact with?

16 THE JUROR: Yes. Not very close -- not very close,
17 but, yes, from time to time, friends.

18 THE COURT: So how would you stay -- one thought I had
19 was people sometimes do that through Facebook, but you do it
03:23 20 other ways. How do you do it?

21 THE JUROR: Skype.

22 THE COURT: Skype?

23 THE JUROR: Skype, and we also call. But I have my
24 brother living in Israel, and also communicate with him by
25 Skype and phone.

1 THE COURT: Let me ask you about Question 77 on page
2 20. In this question we asked whether you had, based on things
3 you had seen or read in the media or otherwise, formed an
4 opinion that this defendant is guilty or not guilty or that he
5 should be sentenced to death or not, and as to each of those we
6 gave you the choice of "yes," "no" and "unsure." To each of
7 those you checked "unsure," okay? You can --

8 THE JUROR: Yes, I did. But I certainly think that
9 he's probably guilty, but I'm not -- I cannot tell for sure.
03:24 10 About the death penalty? I cannot make the decision, one or
11 another side right now. Of course it's a very difficult one,
12 and I'm not sure what to say on that.

13 THE COURT: Right. I want to come back to that, but I
14 want to talk about first whether you have formed an opinion
15 that he's guilty or not, and you say that you think probably
16 that is the case. Further down in the question, after the
17 multiple choice A, B, C, D, we asked if you answered "yes,"
18 which you didn't on the form, but I take what you're saying now
19 is equivalent to saying "yes" to Part A, that you think you do
03:25 20 have an opinion, to some degree, anyway. Is that fair?

21 THE JUROR: Yes, to some degree. That's correct.

22 THE COURT: Okay. So then we ask if you had an
23 opinion, would you be able to set it aside and base your
24 decision on guilt based solely on the evidence presented in the
25 course of the trial here in the court, and you checked the box

1 and said "able."

2 THE JUROR: Yes.

3 THE COURT: Can you tell us about that?

4 THE JUROR: Yeah, I can do it because I could look at
5 it -- like maybe change some opinion which I had before based
6 on some facts. But I can also tell you that maybe I'm not a
7 good choice for this role because I take it very personal, all
8 what happened. And I put it in question. First of all, my
9 husband runs marathons, and he could be there. I could be
03:26 10 waiting for him. He could be a runner.

11 Also, it's very personal for me because, as you
12 already heard, I came here 25 years ago from Moscow as an
13 immigrant with two boys -- two young boys. So everything here
14 is very, you know, disturbing for me, and I take it very
15 personal. And also, my brother who's in Israel -- and I am
16 certainly very against the extremism, Muslim extremism, because
17 of that. So I don't think I'm a good choice.

18 THE COURT: How -- how long has your brother been in
19 Israel?

03:26 20 THE JUROR: 26 years.

21 THE COURT: About the same time? You all left --

22 THE JUROR: Yeah, he left, like, one year before us.

23 THE COURT: What is his employment or profession?

24 THE JUROR: He's an artist. He's also -- he's an
25 artist and he doesn't work. He's like -- now he's 60- -- he

1 was 68 -- 69 years yesterday, so...

2 THE COURT: So you think that because of the pattern
3 of your immigration with two young boys kind of matches what
4 you understand the family of Mr. Tsarnaev has?

5 THE JUROR: Yes. I think I take it very personally.
6 I know what brainwashing could be. It's very disturbing, I can
7 tell you.

8 MR. WEINREB: Okay.

9 THE COURT: All right. Thank you. We appreciate
03:27 10 that. Just leave that there.

11 THE CLERK: Just leave that there. We'll take care of
12 it.

13 THE JUROR: Thank you.

14 (The juror exits the courtroom.)

15 THE CLERK: Juror No. 386.

16 THE JURY CLERK: Juror 386.

17 (The juror enters the courtroom.)

18 THE CLERK: Sir, over here, if you would. Have a
19 seat. Do me a favor, keep your voice up, speak into the mic so
03:29 20 everyone around the table can hear you, okay?

21 THE JUROR: Okay.

22 THE COURT: Good afternoon.

23 THE JUROR: Good afternoon.

24 THE COURT: Since you were here last, have you been
25 able to avoid any discussion of the substance of the case with

1 anyone?

2 THE JUROR: Yes.

3 THE COURT: And also as much as possible to avoid any
4 media accounts or reporting?

5 THE JUROR: Yes.

6 THE COURT: Okay. So that's the questionnaire that
7 you filled out. We're going to follow up with some further
8 questions about some of your answers, okay?

9 THE JUROR: Okay.

03:30 10 THE COURT: Looking at -- on page 10, Question 26,
11 tell us a little bit about what your work is. You work for
12 Central Boston Elder Services?

13 THE JUROR: I'm sorry. Page?

14 THE COURT: Ten.

15 THE JUROR: Yes, I work at Central Boston Elder
16 Services.

17 THE COURT: Tell us what that organization is.

18 THE JUROR: We provide services to elderly people.
19 Like we contract --

03:30 20 THE COURT: Is it a private, nonprofit organization?

21 THE JUROR: Yes.

22 THE COURT: And you describe your position there as
23 case manager. Tell us a little bit about what you do --

24 THE JUROR: I visit --

25 THE COURT: On, you know, a daily, weekly basis, what

1 sorts of things you do.

2 THE JUROR: I usually visit elderly people, make sure
3 they have everything they need. If I see anything that I think
4 they need, like a walker, cane, handheld shower, some things
5 that they might need, I address that.

6 THE COURT: You visit them in their homes?

7 THE JUROR: In their homes.

8 THE COURT: What would your weekly schedule be like?

9 THE JUROR: Usually I do about eight visits weekly,
03:31 10 and on some days I visit, some days I do notes, progress notes.

11 THE COURT: And that's generally in the Boston area?

12 THE JUROR: Yes.

13 THE COURT: Your answer to Question 26 says that you
14 had previously been a senior pastor?

15 THE JUROR: Senior pastor in Puerto Rico.

16 THE COURT: In Puerto Rico? Can you tell us a little
17 bit about that?

18 THE JUROR: Well, I used to be a pastor of a small
19 church, about 35 people, and we used to work out in the street,
03:32 20 working with drug addicts, alcoholics, people, preaching the
21 gospel, taking them to rehab centers.

22 THE COURT: And that -- so that was before you moved
23 up to the Boston area?

24 THE JUROR: Before I moved to Boston, yeah.

25 THE COURT: When you came here, then you started

1 working for the Elder Services?

2 THE JUROR: That's correct. I've been here for five
3 years now.

4 THE COURT: You'll see at the bottom of page 10 and
5 the top of the next page we asked about social media, and you
6 said you use Facebook to chat with family and friends in Puerto
7 Rico?

8 THE JUROR: Uh-huh.

9 THE COURT: And also daily thoughts. Can you tell us
03:32 10 what you had in mind --

11 THE JUROR: I just write some poems and things, and I
12 share with my family and friends.

13 THE COURT: Okay. Let me ask you to turn to page 20,
14 Question 77. In this question we asked whether -- as a result
15 of things you'd seen or read in the media or from other
16 sources, whether you'd formed an opinion whether the defendant
17 is guilty or not and whether he should receive the death
18 penalty or not. And you answered that you had an opinion that
19 he was guilty, and further down in D that you had an opinion
03:33 20 that he should not receive the death penalty.

21 We then asked further down in the question that if you
22 answered "yes" to any of the questions, would you be able or
23 unable to set aside that opinion.

24 THE JUROR: Where was that? I'm sorry.

25 THE COURT: This part right here.

1 THE JUROR: 79?

2 THE COURT: No, no, above 78. Right above 78. The
3 second half of Question 77.

4 THE JUROR: Okay.

5 THE COURT: Do you see where it begins, "If you
6 answered 'yes' to any of the questions"? There's no number in
7 front of it.

8 THE JUROR: Uh-huh. Yes, sir.

9 THE COURT: Right. And you'd answered "yes" to Part A
03:34 10 and Part D, right, above, in 77?

11 THE JUROR: Uh-huh.

12 THE COURT: Do you see you checked "yes" for A and D?

13 THE JUROR: Uh-huh. Yes.

14 THE COURT: Okay? So we asked then in the next
15 paragraph, if you answered "yes," would you be able or unable
16 to set aside the opinion you said you had and base a decision
17 of guilt or punishment based solely on the evidence presented
18 to you in court, and we gave you a choice between "able" and
19 "unable," and you said "able."

03:35 20 THE JUROR: Yes.

21 THE COURT: You would be able to do that.

22 THE JUROR: Yes.

23 THE COURT: Can you tell us about that?

24 THE JUROR: Yes, it's just if I'm going to judge what
25 I saw, what they said on TV, I might think he's guilty. But

1 after what I heard, the evidence and all that, I might change
2 my mind. So that's when I say "yes."

3 And what was the other one?

4 THE COURT: No, that was it. That's what I wanted to
5 ask you about. So let me just go a little further with that.
6 You understand that in our criminal justice system a person who
7 is accused of a crime is presumed to be not guilty, or
8 innocent, of the crime unless and until the government proves
9 he's guilty by the evidence produced at trial.

03:36 10 THE JUROR: Correct.

11 THE COURT: And proves that beyond a reasonable doubt.
12 You understand those principles?

13 THE JUROR: Yeah.

14 THE COURT: So what we ask jurors to do is -- even if
15 they have some ideas about the matter beforehand from publicity
16 and so on -- to focus their attention on the evidence at trial
17 and make a judgment limited to the evidence at trial and not by
18 other things.

19 THE JUROR: Right. Correct.

03:36 20 THE COURT: And by your answer, you're indicating that
21 you think you're able to do that if you were a juror in this
22 case?

23 THE JUROR: Yes, yes, I am.

24 THE COURT: I get confused between questionnaires.

25 Have you had any experience as a juror either here or in Puerto

1 Rico?

2 THE JUROR: No. I was going to -- they called me when
3 I first got here, but my English was limited, so I couldn't
4 serve.

5 THE COURT: Well, it's not very limited now.

6 THE JUROR: Yes.

7 (Laughter.)

8 THE COURT: So let me turn to the death penalty
9 questions. And beginning on page 23 at Paragraph 88 -- not
03:37 10 paragraph, Question 88.

11 THE JUROR: Yes.

12 THE COURT: We first asked if you have any views on
13 the death penalty in general, what are they, and you wrote, "I
14 believe it's too easy for a person to die or receive the death
15 penalty after committing a crime like this one."

16 THE JUROR: Yes. Because I think it's -- for me, you
17 know, a person who committed a crime like this should be
18 thinking about what they did the rest of their life instead of,
19 you know, kill them. I think that's worse.

03:38 20 THE COURT: Uh-huh. In the next question we asked to
21 see if you could put yourself on a numerical scale from 1 to
22 10, where 1 represented a belief that the death penalty should
23 never be imposed and 10 to believe it should always be imposed
24 whenever a person is convicted of intentional murder, and you
25 selected 1, which as the question was phrased, would indicate

1 that you believe it should never be imposed. Is that your view
2 or --

3 THE JUROR: Yes, that's what I believe.

4 THE COURT: If you go to the next page, Question 90,
5 we set out a series of possible statements and asked you to
6 choose one that best described your feelings about the death
7 penalty in a case where someone had been proved guilty of
8 murder, and you selected C, "I'm opposed to the death penalty
9 but I could vote to impose it if I believed that the facts and
03:39 10 the law in a particular case called for it."

11 THE JUROR: Yes. What I'm trying to say is if
12 the -- if I'm in a trial like, say, this one and everybody vote
13 that the person should receive the death penalty, well, I'll go
14 with it. That's what I'm trying to --

15 THE COURT: Well, it seems -- let me say -- I know the
16 questions are kind of formed differently, but in the previous
17 question you said you would never do it, and now in this
18 question you say you might do it. And I guess that's what I'm
19 trying to --

03:39 20 THE JUROR: Oh, maybe I misunderstood the question.
21 What I'm trying to say that I -- if the -- if the jurors
22 decided -- decided that the person should receive the death
23 penalty, I will have to agree with that. That's what I'm
24 trying to --

25 THE COURT: Well, you understand you'd be instructed

1 that your decision would be your own decision, not what other
2 people decide, and you would be not only free but required to
3 make your own decision about it and not necessarily vote with
4 the majority or even everybody else. I mean, you could take
5 your own position even if it was different from all the other
6 jurors. Do you understand that?

7 THE JUROR: Okay.

8 THE COURT: You don't have to agree with them.

9 So that's why we're asking you for your views, because
03:40 10 your views are important, as any juror's views are. But you
11 don't have to defer to anybody. What you do have to do, what
12 we expect you to do, is listen to all the evidence in the case,
13 including the evidence at the penalty phase, and make a
14 judgment based on your own assessment of that regardless of
15 what other jurors think.

16 Are you clear about that?

17 THE JUROR: Yes, I think I misunderstood that.

18 THE COURT: All right. So now understanding that, you
19 are free to make your own decision even if all the other jurors
03:41 20 think otherwise, the question, I guess, is: Would you change
21 your answer to Question 90 or would you --

22 THE JUROR: Now that I understand better, let me see
23 which one is the one --

24 THE COURT: Yeah, take your time. Read through all of
25 them.

1 (Pause.)

2 THE JUROR: I'll say A.

3 THE COURT: A, which is, "I'm opposed to the death
4 penalty and will never vote to impose it in any case no matter
5 what the facts"?

6 THE JUROR: Yeah, I would say that.

7 THE COURT: That's pretty -- okay. Okay. I'll...

8 MR. WEINREB: Good morning. Or actually, good
9 afternoon.

03:42 10 THE JUROR: Good afternoon.

11 MR. WEINREB: My name is Bill Weinreb. I'm one of the
12 prosecutors.

13 I just wanted to also point your attention to on page
14 25, Question 95 at the bottom. If you could just reread that
15 question.

16 THE JUROR: 95?

17 MR. WEINREB: Yes, please.

18 THE JUROR: You want me to read out loud?

19 MR. WEINREB: No. No, just to yourself.

03:43 20 (Pause.)

21 THE JUROR: Yes.

22 MR. WEINREB: Okay. Is that still your answer today?

23 THE JUROR: That's my answer, yeah.

24 MR. WEINREB: Okay. Thank you.

25 MS. CLARKE: Good afternoon. My name is Judy Clarke.

1 I'm one of Mr. Tsarnaev's lawyers, and I just had a few
2 questions. And I don't want it to be a tug-of-war; I just want
3 to sort of get at where you are on the death penalty.

4 The judge will give you, the jury, instructions that
5 they're to deliberate and talk about and weigh the evidence in
6 the penalty phase.

7 Does that make sense to you?

8 THE JUROR: I'm sorry. Can you do that again?

9 MS. CLARKE: The judge will tell you that as a juror
03:44 10 you have an obligation to talk with your fellow jurors about
11 the evidence. Does that make sense?

12 THE JUROR: Uh-huh.

13 MS. CLARKE: Do you think you could do that?

14 THE JUROR: Talk with the jurors about --

15 MS. CLARKE: -- the evidence.

16 Maybe I'll take you back to Question 77, page 20. You
17 got it? Question 77A.

18 THE JUROR: Okay.

19 MS. CLARKE: And you remember talking to the judge
03:44 20 about that question, and he was --

21 THE JUROR: Yes.

22 MS. CLARKE: -- telling you that -- or asking you
23 whether you would be able to set aside that opinion, listen to
24 the evidence and talk to the rest of your juror friends, people
25 in the jury box with you, right --

1 THE JUROR: Uh-huh.

2 MS. CLARKE: -- and change your opinion?

3 MR. WEINREB: Objection. That wasn't the question.

4 The question was: If you heard the evidence at trial, could
5 you change your opinion? I don't think it had anything to do
6 with talking to the other jurors.

7 MS. CLARKE: All right. I'll try to get it right.

8 THE COURT: I put that in later.

9 (Laughter.)

03:45 10 MS. CLARKE: I thought you had "friends" in there
11 somewhere.

12 You told the judge that you could listen to the
13 evidence at the trial and change your opinion, right?

14 THE JUROR: I definitely said yes.

15 MS. CLARKE: So that's sort of the same question on
16 the death penalty. Would you be able to listen to the evidence
17 presented by both sides and fairly consider both sides?

18 THE JUROR: Of course.

19 MS. CLARKE: So in sitting with the jury, would you be
03:45 20 able to consider the government's position that the death
21 penalty should be imposed?

22 THE JUROR: Well, my opinion is that, you know, what I
23 believe, it shouldn't be imposed, but if the government -- if
24 the government decided to do that, I cannot oppose that, if
25 they're going to --

1 MS. CLARKE: Well, that's not really the question. I
2 mean, I think we all understand that you're opposed to the
3 death penalty yourself personally, and that, if given a choice,
4 you wouldn't have a death penalty in this country.

5 THE JUROR: Uh-huh.

6 MS. CLARKE: But that's not the question. The
7 question is whether or not you can fairly consider the
8 arguments for the death penalty as well as the arguments
9 against the death penalty in a case.

03:46 10 THE JUROR: Oh, yes.

11 MS. CLARKE: You can --

12 THE JUROR: I got to hear all the evidence, and after
13 that I can make my mind about -- if he's guilty or not or --
14 you know, if he's guilty or not, but not about the death
15 penalty. Do you know what I mean? I believe there's two
16 things -- two different things.

17 MS. CLARKE: Two different questions. One is whether
18 he's guilty or not, and that's a decision that the jury makes.

19 THE JUROR: Right.

03:46 20 MS. CLARKE: And then the second decision the jury
21 makes if they find him guilty is whether or not to impose life
22 imprisonment without the possibility of release or the death
23 penalty, right?

24 THE JUROR: Yes.

25 MS. CLARKE: And the question is whether or not your

1 views against the death penalty would allow you to still
2 consider the arguments for the death penalty as well as the
3 arguments against the death penalty.

4 THE JUROR: I believe that I can hear all the evidence
5 and then decide if he's guilty or not --

6 MS. CLARKE: And --

7 THE JUROR: -- until there.

8 MS. CLARKE: And then the second question is whether
9 or not you can, in the second phase of the trial, consider the
03:47 10 evidence for the death penalty and the evidence against the
11 death penalty.

12 MR. WEINREB: Objection, your Honor. The question's
13 now been asked several times.

14 THE JUROR: Yes, I already answered the question.

15 THE COURT: Go ahead and answer it if you can.

16 THE JUROR: Yes, I don't believe in the death penalty.

17 MS. CLARKE: Okay. Thank you very much.

18 THE COURT: Thank you very much, sir. Just leave the
19 form there.

03:47 20 THE JUROR: Thank you so much.

21 (The juror exits the courtroom.)

22 THE CLERK: Juror No. 390.

23 THE JURY CLERK: Juror 390.

24 (The juror enters the courtroom.)

25 THE CLERK: Ma'am, over here, please, if you would.

1 Have a seat. Do me a favor and keep your voice up and speak
2 into the mic so everyone around the table can hear you, okay?

3 THE JUROR: Okay.

4 THE CLERK: Thanks.

5 THE COURT: Good afternoon.

6 THE JUROR: Good afternoon.

7 THE COURT: Since you were last here have you been
8 able to avoid discussing the substance of the case with
9 anybody?

03:49 10 THE JUROR: Yes.

11 THE COURT: And also as much as possible avoid the
12 media reporting and accounts about the case?

13 THE JUROR: Yes.

14 THE COURT: Thanks. So that's the questionnaire that
15 you filled out. We're going to follow up with some questions
16 about some of the answers you've given.

17 I want to start with what you do for a living. I'm
18 looking at page 10, Question 26. This says that you are a
19 medical assistant at Mass. General Hospital?

03:49 20 THE JUROR: Yes.

21 THE COURT: You began in 2013?

22 THE JUROR: Yes.

23 THE COURT: Do you remember what month?

24 THE JUROR: October 1st.

25 THE COURT: 2013?

1 THE JUROR: Yes.

2 THE COURT: So you were not there in April 2013 when
3 the marathon events happened?

4 THE JUROR: No; I was in school.

5 THE COURT: And school was Bunker Hill?

6 THE JUROR: Yes.

7 THE COURT: Do you remember what you -- during that
8 week when things were happening were you at school or were you
9 home?

03:50 10 THE JUROR: No, I was home.

11 THE COURT: Was school off that week? I know for
12 grade schools it is but --

13 THE JUROR: Yes.

14 THE COURT: -- it was for community college as well?

15 THE JUROR: Yes.

16 THE COURT: Okay. So tell me about your work as a
17 medical assistant.

18 THE JUROR: I work in the cancer center at MGH. I do
19 vital signs, assist with bone marrow biopsies, thyroid
03:50 20 biopsies, and lobotomy.

21 THE COURT: Let me ask you to turn back to page 5 and
22 Question 10. In this question we outlined the schedule the
23 case would take and also pointed out it's likely to be a long
24 case, and the estimate there was three to four months. That is
25 an estimate, but it's very possible. We then asked if that

1 schedule would cause you any special hardship that would make
2 it difficult for you to serve in the case.

3 I'm just wondering how it would impact your employment
4 if you were on a case on that schedule that would last three or
5 four months.

6 THE JUROR: Well, I spoke to my supervisor about it
7 just saying I was a potential juror, and they were okay with
8 it.

9 THE COURT: You'll continue to get paid?

03:51 10 THE JUROR: Yes.

11 THE COURT: We asked -- this is -- if you want to look
12 at it, it's page 11, Question 30. We asked about use of social
13 media. You said Instagram every day.

14 THE JUROR: Yes.

15 THE COURT: Are you both a sender and a receiver?

16 THE JUROR: Yes.

17 THE COURT: Some people look more than they post.

18 THE JUROR: No, I do both.

19 THE COURT: Social things? Just friends and family
03:52 20 kinds of things?

21 THE JUROR: Yes.

22 THE COURT: You don't use it for work or anything?

23 THE JUROR: No.

24 THE COURT: Your sister served as a Marine?

25 THE JUROR: Yes, she's currently still a Marine.

1 THE COURT: She is?

2 THE JUROR: Uh-huh.

3 THE COURT: What have her assignments been, do you
4 know, or deployments? Has she been over in Iraq and
5 Afghanistan?

6 THE JUROR: Yes, from 2012 to 2013.

7 THE COURT: Where?

8 THE JUROR: Afghanistan.

9 THE COURT: And she's back now?

03:52 10 THE JUROR: Yes.

11 THE COURT: Where is she stationed?

12 THE JUROR: San Diego.

13 THE COURT: Did she see combat, do you know, when she
14 was over there?

15 THE JUROR: I'm not sure.

16 THE COURT: Have you talked to her about it?

17 THE JUROR: She doesn't talk much about it.

18 THE COURT: And you don't press?

19 THE JUROR: No.

03:52 20 THE COURT: Let me ask you to look at page 20 and
21 Question 77. In this question we asked jurors whether as a
22 result of things they'd seen or read in the media or elsewhere,
23 whether they formed any opinion about whether the defendant was
24 guilty or not and whether he should receive the death penalty
25 or not, and we gave you a choice of "yes," "no" or "unsure,"

1 and you checked "unsure" as to each of those.

2 Can you tell us why you made that decision?

3 THE JUROR: I don't like to base it off of what other
4 people have said.

5 THE COURT: Excuse me?

6 THE JUROR: I don't like to base it off of what other
7 people have said, so I'm unsure.

8 THE COURT: Okay. So if you were -- let me back up.

9 You understand that in the criminal process that if a
03:54 10 person is accused of a crime, a person is presumed innocent, or
11 not guilty, of the crime unless and until the government proves
12 a person guilty by the evidence at trial and proves it beyond a
13 reasonable doubt to the satisfaction of the jury.

14 You understand those principles?

15 THE JUROR: Yes.

16 THE COURT: And so what we ask jurors to do is to
17 focus on the evidence produced at trial and consider that and
18 make judgments about it, and if they're convinced by the
19 government -- by the government's evidence or all the evidence
03:54 20 in the case that the person is guilty and they're convinced
21 beyond a reasonable doubt, then they're justified in returning
22 a verdict of guilty, but if they're not convinced beyond a
23 reasonable doubt that the person is guilty of what crime is
24 accused -- the person is accused of, it's the obligation of the
25 jury then to vote not guilty.

1 Do you understand those principles?

2 THE JUROR: Yes.

3 THE COURT: Would you -- if you on any particular
4 charge were not convinced the government had satisfied you
5 beyond a reasonable doubt, would you be able to vote not
6 guilty?

7 THE JUROR: If I wasn't convinced?

8 THE COURT: Yeah.

9 THE JUROR: No.

03:55 10 THE COURT: Would you be able to vote not guilty?

11 THE JUROR: Not guilty.

12 THE COURT: Yeah. We asked some questions about the
13 death penalty beginning on page 23 at Question 88, and the
14 first one, 88, was a question whether you had any views on the
15 death penalty in general, and if so, what they were, and you
16 said "none."

17 THE JUROR: No.

18 THE COURT: No general views pro or con?

19 THE JUROR: No.

03:55 20 THE COURT: But then in the next question we asked,
21 pick a number on the scale from 1 to 10, where 1 is a belief
22 that the death penalty should never be imposed and 10 reflects
23 a belief that the death penalty should be imposed whenever a
24 defendant's been convicted of intentional murder, and you
25 picked 10.

1 THE JUROR: Right. Like I don't have any strong
2 beliefs against the death penalty, but there are consequences.
3 So if you do commit a murder, then you should be held
4 responsible for that. But I'm just saying that, like, I have
5 nothing against the death penalty.

6 THE COURT: So you thought Question 88 was asking
7 whether you had any negative opinions about the death penalty?

8 THE JUROR: Yeah.

9 THE COURT: Okay. I think we meant to ask either way.
03:56 10 In -- well, let me ask you to go to the next page.
11 Here, rather than asking you to select a number on the scale,
12 we asked you to select a statement if you thought it best
13 described your feelings about the death penalty in a case where
14 someone has been proved guilty of murder. And you understand
15 that we don't reach the question of a penalty unless somebody's
16 been convicted of a murder, right? I mean, that's the premise
17 to get to the penalty question, right?

18 So here on this question you selected statement D
19 which was, "I'm not for or against the death penalty. I could
03:57 20 vote to impose it or I could vote for a sentence of life
21 imprisonment without possibility of release, whichever I
22 believed was called for by the facts and the law in the case."

23 That sort of indicates you could go either way.

24 THE JUROR: Right.

25 THE COURT: Let me go back to Question 89 because if

1 you look at 89 where you said "strongly favor" -- do you see
2 that, you circled 10?

3 THE JUROR: Uh-huh.

4 THE COURT: If you look right above it, it says "A 10
5 reflects a belief that the death penalty should be imposed
6 whenever the defendant has been convicted of intentional
7 murder." That means more or less always. And that's a little
8 different from D. So maybe -- the questions aren't perfect and
9 it could be subject to interpretation, so tell us -- reconcile
03:58 10 for us, I guess, what seems to be a difference between 89 and
11 90.

12 THE JUROR: Well, my thing is, it's just I guess I can
13 go either way depending on if he was guilty or not depending on
14 what evidence was brought against him.

15 THE COURT: We're not talking about guilt now; we're
16 talking a person who has been convicted of murder, okay? So
17 now we've moved on to the second phase, which is the penalty
18 phase, what punishment should be imposed on this person who is
19 guilty of murder.

03:58 20 THE JUROR: Yeah, if he's guilty, I would impose the
21 death penalty.

22 THE COURT: Okay.

23 THE JUROR: If that makes any sense.

24 THE COURT: Okay. So you heard me this morning talk
25 about the penalty phase where there would be an opportunity for

1 both sides to present evidence about what the appropriate
2 punishment should be, the death penalty or life imprisonment,
3 and that the government would present evidence -- aggravating
4 factors that it would argue justify the death penalty and the
5 defense would have the opportunity to present evidence of
6 mitigating factors that would suggest the death penalty is not
7 the right punishment and life imprisonment is.

8 Do you remember those instructions?

9 THE JUROR: Yes.

03:59 10 THE COURT: And as I said, after hearing all that, the
11 jurors would be asked to decide what is the right penalty for
12 this case for a person who has been convicted of this crime.
13 Are you saying that you would or would not be able to consider
14 both mitigating and aggravating factors?

15 THE JUROR: No, I would be able to consider both.

16 THE COURT: What I'm trying to get at is whether you
17 think you would automatically go in one direction or another
18 without considering the evidence or whether you'd consider --

19 THE JUROR: No, I would consider the evidence.

03:59 20 THE COURT: The reason I'm pressing you a little bit
21 on this is because you -- I want to be sure we understand what
22 you're telling us because earlier I think you said that if the
23 person was guilty of murder, you would impose the death
24 penalty. Do you see the possible conflict between those
25 positions?

1 THE JUROR: Uh-huh.

2 THE COURT: Can you tell us where you really are?

3 THE JUROR: It's just really in the middle, like
4 it's -- I guess it all depends on the evidence brought against
5 him. I mean, that's all I can really say.

6 THE COURT: Let me ask you to turn to page 25 at the
7 bottom, Question 95. There we asked if you found this
8 defendant guilty and you decided the death penalty was the
9 appropriate punishment, could you conscientiously vote for it.
04:00 10 And you said "yes," right?

11 THE JUROR: Yes.

12 THE COURT: And that is your answer to that question?

13 THE JUROR: Yes.

14 THE COURT: And then on the top of the next page, if
15 you found him guilty and you decided that life imprisonment
16 without the possibility of release was the appropriate
17 punishment, could you conscientiously vote for life
18 imprisonment without the possibility of release. You said
19 "yes" to that?

04:01 20 THE JUROR: Yes.

21 THE COURT: And is that still your answer?

22 THE JUROR: Yes.

23 MR. WEINREB: Thank you, your Honor.

24 Good afternoon.

25 THE JUROR: Hi.

1 MR. WEINREB: Hi. My name is Bill Weinreb. I'm one
2 of the prosecutors in the case. If I could, I would just like
3 to follow up on a few of your answers.

4 So the goal here, as the judge explained, is to
5 determine whether someone can be fair and impartial in sitting
6 as a juror, meaning judge the case on the evidence and not on
7 things that you hear outside of the courtroom or that sort of
8 thing. And I notice one of the things that you mentioned on
9 your questionnaire is that you have a seven-year-old boy.

04:01 10 THE JUROR: Yes.

11 MR. WEINREB: Yeah. So you may hear evidence in this
12 case -- in fact, you will hear evidence that one of the victims
13 of the marathon bombings was an eight-year-old boy.

14 Would the fact that you have a seven-year-old boy
15 prevent you from being a fair and impartial juror in this case?

16 THE JUROR: It might make it difficult.

17 MR. WEINREB: Okay. So that's understandable. And
18 what we're trying to get at here is whether you can judge the
19 case based on the evidence, and the judge -- and basically on
04:02 20 the facts and the law. So the judge will explain -- you'll
21 hear facts in the courtroom; the judge will explain the law to
22 you. Jurors aren't expected to not have personal lives, not
23 have a background, but they are expected to compartmentalize to
24 some degree and sort of put aside --

25 MR. BRUCK: I want to object to the long explanation.

1 He should ask the question.

2 THE COURT: Yeah, yeah, I think you should ask the
3 question.

4 MR. WEINREB: Okay. So the question is simply: Will
5 you be able to follow the law as the judge gives it to you and
6 judge the case on the facts?

7 THE JUROR: Yes.

8 MR. WEINREB: Okay. Now let me ask the same question
9 about your relatives who have had Army service. So, again, you
04:03 10 may hear evidence in this case that one of the motives for the
11 marathon bombing was to essentially punish America for its
12 actions in places like Afghanistan and Iraq and to advance the
13 cause of terrorists.

14 And the question is, again, you know, you'll hear
15 evidence about that and you may believe it and you may not
16 believe it, you may believe some of it or not believe some of
17 it, but the question is: Will you be able to decide the case
18 based, again, on the evidence that you hear in the courtroom
19 despite the fact that you've had siblings who have served?

04:04 20 THE JUROR: Yes.

21 MR. WEINREB: So now I want to follow up just a bit on
22 what you said about the death penalty. And trust me, you're
23 not alone in finding the process a little confusing, but...

24 So at the risk of repeating what's been said before,
25 I'll say it again. So this trial may have two phases. So the

1 first phase is just like any other trial; it's to determine if
2 the defendant's guilty or innocent, or guilty or not guilty.
3 And at the end of that process, the jurors will vote. And if
4 they find the defendant guilty of a capital crime, meaning a
5 crime that carries a potential sentence of death, then there
6 will be a second phase of the trial, but if they find the
7 defendant guilty, that means that the jury will have found the
8 defendant guilty of a deliberate, intentional, premeditated
9 murder, and the question then becomes -- so then during the
04:05 10 second phase the question is: What should the penalty be for
11 that murder? Should the penalty be life imprisonment or should
12 it be the death penalty? We're not talking about this case
13 now; I'm talking about any death penalty case.

14 And in the second phase you hear evidence about that.
15 Again, the government puts on evidence that it believes shows
16 that this is the kind of crime, or the kind of defendant, who
17 should deserve the death penalty, and the defense puts on
18 evidence that it thinks shows that this is the kind of crime or
19 the kind of defendant that should not -- does not deserve the
04:05 20 death penalty, should get life imprisonment without release
21 instead.

22 Do you understand all that?

23 THE JUROR: Yes.

24 MR. WEINREB: All right. So the question is: Would
25 you go into that second phase with your mind already made up

1 about what the penalty should be or could you hear the evidence
2 and meaningfully consider all of it and weigh it before
3 determining what the penalty should be?

4 THE JUROR: I would want to hear both evidence to see
5 what my decision would be.

6 THE COURT: Would you just say it a little louder? I
7 think some of us had a problem --

8 THE JUROR: I would listen to both evidence in order
9 to determine what my decision would be.

04:06 10 MR. WEINREB: Thanks very much.

11 THE JUROR: You're welcome.

12 MR. BRUCK: Good afternoon.

13 THE COURT: Not quite finished. Not quite finished.

14 MR. BRUCK: One more person wants to ask you some
15 questions, and that's me. My name is David Bruck, and I'm one
16 of Jahar Tsarnaev's lawyers. Is it okay if I ask you a few
17 more questions?

18 THE JUROR: Sure.

19 MR. BRUCK: I know you've already been through the
04:06 20 mill. Thank you.

21 You now work at Mass. General?

22 THE JUROR: Yes.

23 MR. BRUCK: You weren't working there at the time?

24 THE JUROR: No.

25 MR. BRUCK: At the time of the bombing?

1 THE JUROR: Correct.

2 MR. BRUCK: Can you tell me what you were doing on
3 April 15th, 2013? You said you were a student. Can you tell
4 me how you heard about the bombing?

5 THE JUROR: I remember being at home and seeing it on
6 the news, and from there just watching it.

7 MR. BRUCK: And did you have any concerns about people
8 that you thought might be there?

9 THE JUROR: No.

04:07 10 MR. BRUCK: You didn't know anyone?

11 THE JUROR: No.

12 MR. BRUCK: Have you since learned that there were
13 people that you knew that were along the route of the marathon
14 or --

15 THE JUROR: No.

16 MR. BRUCK: -- witnessing it?

17 How about on the -- on April 19th, the day where there
18 was the manhunt. Do you remember that?

19 THE JUROR: Yes.

04:07 20 MR. BRUCK: Where were you that day?

21 THE JUROR: I was home because they said everybody was
22 supposed to stay home. I was home because on the news it said
23 that everyone should be home. So I was watching the whole
24 thing at home.

25 MR. BRUCK: So you had to stay at home that day

1 because of the manhunt?

2 THE JUROR: Yes.

3 MR. BRUCK: Okay. The -- and with your child?

4 THE JUROR: Yes.

5 MR. BRUCK: Your child was home that day too?

6 THE JUROR: Yes.

7 MR. BRUCK: Did you find that you had to explain to
8 him what this was all about, what's going on?

9 THE JUROR: Yes.

04:08 10 MR. BRUCK: Was he frightened?

11 MR. WEINREB: Objection.

12 THE COURT: No, go ahead. You could have it.

13 MR. BRUCK: Was he alarmed?

14 THE JUROR: I think he was more confused. He didn't
15 really understand.

16 MR. BRUCK: Did you find it hard to explain what was
17 happening?

18 THE JUROR: Yes.

19 MR. BRUCK: Like any parent?

04:08 20 THE JUROR: Yes.

21 MR. BRUCK: Is it something that he has talked about
22 since then?

23 THE JUROR: No.

24 MR. BRUCK: You've been asked now already about
25 evidence that the motive for the bombing may have been

1 retribution for what our troops have been doing in the wars in
2 Afghanistan and Iraq, and you told us about your sister. Now
3 that you've had a little bit of chance to think about it, do
4 you think that your sister's time over there, the risks that
5 anyone takes when they're in harm's way in Afghanistan, that
6 that might affect the way you look at this case at all?

7 THE JUROR: No.

8 MR. BRUCK: Are you sure?

9 THE JUROR: Yes.

04:09 10 MR. BRUCK: Okay. And I want to ask you again -- and
11 what I'm talking about now -- you told the judge originally --
12 and you filled out part of the form to suggest that if you're
13 sure that someone was guilty of intentional murder that you
14 would always favor the death penalty as the punishment so long
15 as it was clear, you were satisfied that they really committed
16 an intentional murder. And there's been some back-and-forth
17 about that.

18 Is that how you feel?

19 THE JUROR: Yes.

04:09 20 MR. BRUCK: Now, you've heard us explain, the judge
21 explain, Mr. Weinreb explain, that it's a two-part trial, and
22 the first part is to see whether or not the person's really
23 guilty, and if they are guilty, then there's a second hearing
24 which is to decide whether the person should get the death
25 penalty or life imprisonment. And of course people bring their

1 own views and feelings into that, and the point of all these
2 questions is just to find out what your views and feelings are
3 rather than to tell you what you should think. So that's what
4 I'm trying to do.

5 If you were a juror in the second part and there would
6 be evidence presented by both sides in favor of the death
7 penalty or against it, but we want to know what you think, if
8 you were convinced that a person had committed an intentional,
9 deliberate murder, no doubt in your mind, and you had to decide
04:10 10 after hearing all the evidence at the second part of the trial
11 whether to impose the death penalty or whether to impose life
12 imprisonment, would you always vote for the death penalty?

13 THE JUROR: Yes.

14 MR. BRUCK: That's how you really feel when we've been
15 through all of this understanding that there would be evidence
16 presented going both ways?

17 MR. WEINREB: Objection. That's a leading question.

18 MR. BRUCK: I think we're pretty much done. Thank
19 you.

04:11 20 THE COURT: Finished? All right. Thank you.

21 (The juror exits the courtroom.)

22 THE CLERK: Juror No. 391.

23 THE JURY CLERK: Juror 391.

24 (The juror enters the courtroom.)

25 THE CLERK: Sir, over here, if you would, please.

1 Have a seat. And do me a favor and keep your voice up and
2 speak into the mic so everyone around the table can hear you.

3 THE JUROR: All right.

4 THE COURT: Good afternoon.

5 THE JUROR: Good afternoon.

6 THE COURT: Since you were last here, have you been
7 able to follow my instructions to avoid discussing the
8 substance of the case with anyone?

9 THE JUROR: I've avoided the substance of the case.

04:12 10 People have talked about --

11 THE COURT: Knowing that you're --

12 THE JUROR: Right. Right.

13 THE COURT: -- here but --

14 THE JUROR: Right. But we haven't talked about the
15 substance.

16 THE COURT: And as much as possible to avoid any media
17 reporting of the case?

18 THE JUROR: Yes.

19 THE COURT: So that's the questionnaire that you
04:12 20 filled out. We're going to follow up on some of the answers
21 that you gave us there, and you can follow along, I guess.

22 Let me start with your employment. This is page 10,
23 Paragraph -- I mean Question 26.

24 THE JUROR: Okay. Yup?

25 THE COURT: And you're a -- you manage customer

1 support for a medical imaging company?

2 THE JUROR: Correct.

3 THE COURT: Tell us what that involves. Your job, I
4 mean.

5 THE JUROR: Oh, I have a team of support engineers.

6 We have servers in about 100 hospitals around the country that
7 manage transfer of medical images between hospitals. And so I
8 have a five-person team and we -- you know, whenever there's a
9 problem with it, we're upgrading, fixing, configuring servers
04:13 10 and that sort of thing. So it's IT basically.

11 THE COURT: Okay. Earlier on on page 5 we had given
12 jurors an outline of the schedule we anticipate and the
13 projection that the case could take three or four months --

14 THE JUROR: Uh-huh.

15 THE COURT: -- and asked if it presented a special
16 hardship, and you answered it does not impose any special
17 hardship.

18 THE JUROR: Yeah. I mean, I am the sole income for my
19 house, I guess. I don't know what my employer would do in
04:14 20 terms of -- you know, in terms of three or four months.

21 But -- and my wife is sick. That's why she's not working. But
22 I'd assume my employer would be fine, but I don't know that,
23 actually. So my hardship is basically --

24 THE COURT: Have you raised it?

25 THE JUROR: I think they'll be fine, but I don't know

1 that.

2 THE COURT: You're a salaried employee?

3 THE JUROR: I am a salaried employee, yes. So I need
4 to be sure I'm employed and I have health insurance for my wife
5 and things like that.

6 THE COURT: I understand she's currently unemployed.

7 The implication was that she had worked in the past. What kind
8 of work did she do?

9 THE JUROR: She worked for her parents selling
04:15 10 handbags. And right now she has a heart condition, so she's
11 sort of unable to work right now.

12 THE COURT: I was just getting at the field. She was
13 in retail sales?

14 THE JUROR: Retail sales, yeah.

15 THE COURT: Let me ask you to look at the bottom of
16 page -- go back to page 10, and the last question we asked if
17 you logged or posted messages or opinions. You said you don't
18 really post anymore?

19 THE JUROR: Oh, no, no. I mean, I didn't post to
04:15 20 websites or anything like that. I was at one point a
21 journalist and did writing and stuff like that, but I haven't
22 done that for ten years or so. *New York Media*.

23 THE COURT: What --

24 THE JUROR: They're all technical publications, so I
25 would be writing about technical things usually.

1 THE COURT: You speak a little Russian or understand a
2 little Russian?

3 THE JUROR: I took Russian in college. I mean, I can
4 kind of read Cyrillic from time to time and occasionally pick
5 out words and phrases and stuff, so...

6 THE COURT: Nothing you currently use?

7 THE JUROR: Nothing I currently use, no. Basically
8 college, and I'd been to Russia way back in high school.

9 THE COURT: Where did you go?

04:17 10 THE JUROR: I went to St. Petersburg and I went to
11 Moscow.

12 THE COURT: Let me ask you to turn to page 20,
13 Question 77. Here we asked jurors whether -- based on things
14 they'd seen or read in the media or elsewhere, whether they had
15 formed an opinion that the defendant was guilty or that he was
16 not guilty, and then whether the juror had found -- formed an
17 opinion about the death penalty.

18 You checked the box "yes" for that you had formed an
19 opinion that he was guilty, and "no" the corresponding --
04:17 20 reciprocal answer, I guess.

21 THE JUROR: Right. Right. Right.

22 THE COURT: And then "unsure" about the death penalty.

23 Then below that we asked, "If you answered yes to any
24 of the questions," and you did answer "yes" to A, "would you be
25 able or unable to set aside your opinion and base your decision

1 about guilt solely on the evidence that would be presented in
2 court," and you checked the box "able."

3 THE JUROR: Yeah. I guess my point there was I do
4 come in essentially, based on news media and that sort of
5 thing, feeling that he's guilty, but I could be persuaded, I
6 guess, is the -- I guess the question ultimately is could
7 you -- I'm starting from guilt instead of sort of presumed
8 innocence towards guilt -- you know -- I'm not starting with
9 presumed innocence; I am starting with presumed guilt, but I
04:18 10 could be kind of persuaded towards innocence, I guess, which I
11 realize is not the point of the --

12 THE COURT: Right. It's backwards.

13 THE JUROR: It's backwards, but it is how I kind of
14 feel at this point, so...

15 THE COURT: You think that you would effectively shift
16 the burden of proof to the defendant to prove that he wasn't
17 guilty?

18 THE JUROR: I think so, yes, so -- which I realize is
19 not the answer, but that's -- I think that's what I would have
04:19 20 to kind of -- but I feel I could if someone made a case, so...

21 MR. WEINREB: Your Honor, I think the parties are
22 content.

23 THE COURT: Okay. You also -- let me just ask this:
24 You were very close to the events that day, the day of -- the
25 end of the week.

1 THE JUROR: Yes.

2 THE COURT: The manhunt.

3 THE JUROR: Correct.

4 THE COURT: I think you even said you were awakened by
5 shooting?

6 THE JUROR: Yes.

7 THE COURT: Okay. Thank you.

8 THE JUROR: Okay. Thanks.

9 (The juror exits the courtroom.)

04:20 10 THE COURT: Hold on just a minute. 393?

11 MS. CLARKE: Yes.

12 MR. BRUCK: Yes. I guess I was looking at my watch.

13 THE COURT: Well, I'm looking at a couple of things.

14 You haven't talked about her. I mean, look at Question 26 and
15 Question 98.

16 MR. WEINREB: We've proposed her.

17 THE COURT: I'll talk to her if you want but...

18 (Counsel confer off the record.)

19 THE COURT: You know, if there's any doubt...

04:21 20 MR. BRUCK: I think we should explore hardship, if
21 that's the issue.

22 THE COURT: Have her come in? She's here. We might
23 as well do it, but I have a suspicion.

24 MS. CLARKE: Yes.

25 THE CLERK: Juror No. 393.

1 THE JURY CLERK: Juror 393.

2 (The juror enters the courtroom.)

3 THE CLERK: Ma'am, over here, please, if you would.

4 Have a seat.

5 THE JUROR: Yes.

6 THE CLERK: And do me a favor, keep your voice up and
7 speak into the mic so everyone can hear you, all right?

8 THE JUROR: Yes.

9 THE COURT: Good afternoon.

04:22 10 THE JUROR: Good afternoon.

11 THE COURT: Since you were here last, have you been
12 able to avoid talking about the substance of the case with
13 other people?

14 THE JUROR: Yes.

15 THE COURT: And as much as possible to avoid exposure
16 to media reporting?

17 THE JUROR: Yes. Yes.

18 THE COURT: So that's the questionnaire that you
19 filled out.

04:23 20 THE JUROR: Yes.

21 THE COURT: And we're going to follow up on some of
22 the answers you gave there.

23 THE JUROR: Okay.

24 THE COURT: I'm first looking at page 10 and Question
25 26 where we ask you about your current employment.

1 THE JUROR: I'm retired.

2 THE COURT: Oh, you're retired?

3 THE JUROR: Yes. It will be a year this April. I
4 don't work anymore.

5 THE COURT: And you had written in you were at
6 Countryside Nursing Home, and it carried through to 2015, so...

7 THE JUROR: No, that's wrong. I'm sorry.

8 THE COURT: So you retired last year sometime?

9 THE JUROR: Yes, it was a year ago this April. So
04:23 10 2014.

11 THE COURT: Okay. Okay. So we also asked jurors
12 about whether you used any social media like Facebook or
13 Instagram or anything.

14 THE JUROR: No.

15 THE COURT: You don't?

16 You served on a jury in the state court a couple of
17 years ago?

18 THE JUROR: In Framingham, yes.

19 THE COURT: And that was a criminal case?

04:24 20 THE JUROR: Yes.

21 THE COURT: Your husband has passed away?

22 THE JUROR: Yes.

23 THE COURT: What kind of work did he do before he
24 passed away?

25 THE JUROR: He was a postal worker before he passed

1 away.

2 THE COURT: I'd like you to look in the form -- in the
3 questionnaire to page 20, Question 77 near the top.

4 THE JUROR: Yes.

5 THE COURT: There we asked whether as a result of
6 things you'd seen in the news or learned about the -- things
7 about this case from any source had you formed an opinion about
8 whether the defendant was guilty or not and whether he should
9 receive the death penalty or not. As to the first two
04:25 10 questions, A and B, which are had you formed an opinion that he
11 was guilty or that he was not guilty, you checked the box
12 "unsure."

13 THE JUROR: And I am.

14 THE COURT: Can you tell us about that?

15 THE JUROR: I am unsure. I don't know much about this
16 case. I never really got into it. I don't know much about it
17 at all.

18 THE COURT: Okay. You know from your prior juror
19 service, I assume, that in a criminal case a defendant is
04:25 20 presumed innocent, or not guilty, unless the government proves
21 the person guilty of the crime charged beyond a reasonable
22 doubt by the evidence at the trial?

23 THE JUROR: Yes.

24 THE COURT: And a juror would be asked to listen to
25 the evidence produced in the case and at the end, in

1 deliberation with fellow jurors, decide whether the government
2 had carried its burden of proof, in which case the person could
3 be found guilty, or had failed to carry its burden of proof, in
4 which case the jury will be obliged to find the person not
5 guilty.

6 THE JUROR: Yes.

7 THE COURT: You understand those principles?

8 THE JUROR: Yes.

9 THE COURT: Would you have any difficulty in applying
04:26 10 those principles faithfully if you were a juror in this case?

11 THE JUROR: Yes.

12 THE COURT: Would you have any difficulty doing that?

13 THE JUROR: No, I don't think so. No.

14 THE COURT: In other words, could you listen to the
15 evidence and reserve judgment whether the government had
16 satisfied its burden of proof or not until you had heard all
17 the evidence and discussed it with your fellow jurors?

18 THE JUROR: Yes.

19 THE COURT: I'm going to come to the death penalty
04:26 20 questions in a minute. Actually, right now.

21 I want to turn to page 23. We asked a series of
22 questions beginning on page 23 about juror attitudes about the
23 death penalty.

24 THE JUROR: Yes.

25 THE COURT: Question 88 was if you had any general

1 views about the death penalty, what are they. You wrote, "It's
2 not right to kill."

3 THE JUROR: Yes.

4 THE COURT: Could you expand on that? Could you tell
5 us what you had in mind when you wrote that?

6 THE JUROR: Well, maybe it's because I'm Catholic and
7 thou shall not kill. I don't believe --

8 THE COURT: I just want to be clear. You're talking
9 about the jury or the government doing the killing rather than
04:27 10 a defendant? In other words, it's not right to kill. Somebody
11 might say that about a defendant charged with murder.

12 THE JUROR: Right. Yes.

13 THE COURT: Or someone might say the government should
14 not -- as a matter of moral position, the government should not
15 have the right to kill people. I'm not sure which you're
16 talking about.

17 THE JUROR: Let me just -- I see what you're saying,
18 though. I see what you're saying about that. Well --

19 THE COURT: In other words --

04:28 20 THE JUROR: That's just my -- my -- that's just what I
21 believe. I don't believe in killing anybody.

22 THE COURT: Right. So do you think the government
23 does not have the right to put somebody to death?

24 THE JUROR: I don't know about the government.

25 THE COURT: Well, that's what the death penalty would

1 be, the government putting somebody to death.

2 THE JUROR: Right.

3 THE COURT: And the process of law, but it still would
4 be the authority of the government to put somebody to death.

5 THE JUROR: Yes.

6 THE COURT: Is that what you're talking about when you
7 said it's not right to kill?

8 THE JUROR: Yes.

9 THE COURT: If you look at the next question, 89, we
04:28 10 asked you to circle a number that indicated your opinion, and 1
11 reflected a belief that the death penalty should never be
12 imposed and 10 reflected the belief that it should be imposed
13 whenever a person has been convicted of willful murder, okay?
14 That's what the question asked.

15 THE JUROR: Yes.

16 THE COURT: You selected 1, it should never be
17 imposed?

18 THE JUROR: Yes.

19 THE COURT: If you'd look at the next page, Question
04:29 20 90 asked if you could find among the selections presented a
21 statement that best described your feeling about the death
22 penalty in a case where someone had been proven guilty of
23 murder. You didn't select anything. So I wondered if I could
24 ask you to just take a minute and read through those.

25 THE JUROR: Excuse me. What page again?

1 THE COURT: This is page 24. Two at a time.

2 Would you read through Question 90, and when you're
3 finished let us know, and then we'll ask you if you think
4 there's a statement there that represents your view. Question
5 90.

6 THE JUROR: I'm reading it. 91. I'm sorry.

7 THE COURT: It starts at the top.

8 (Pause.)

9 THE JUROR: Most of this I don't remember from when I
04:30 10 was here last month.

11 THE COURT: Take your time because it's kind of an
12 involved question and we want to be sure we get a good answer.

13 (Pause.)

14 THE JUROR: I just don't know what to say.

15 THE COURT: Okay. Let me ask you to go to page 25.
16 At the bottom of page 25, Question 95, we asked if the
17 defendant was found guilty and you decided that the death
18 penalty was an appropriate punishment for him, could you
19 conscientiously vote for the death penalty, and you said "no."

04:31 20 THE JUROR: No.

21 THE COURT: Can you tell us why you chose that answer?

22 THE JUROR: To be honest, I just don't know. I just
23 think it's wrong.

24 THE COURT: Would you ever be open to the possibility
25 of imposing the death penalty in a case, or are you kind of

1 absolutely against it?

2 THE JUROR: I don't know if I would be against it if
3 it -- you know, I'd have to see. You know, I'd have to --

4 THE COURT: Well, you heard me this morning describe
5 if a person was convicted of a crime for which the death
6 penalty was a possibility, we would proceed to a second phase.

7 THE JUROR: Okay. I understand. Yes.

8 THE COURT: Right? And in that phase the
9 government -- certain principles of law apply to when a death
04:32 10 penalty may be imposed by a jury. The government would try to
11 show that this was one of those cases because, among other
12 things, there were particularly aggravating factors that made
13 it a worse crime than other murders might be.

14 THE JUROR: Yes.

15 THE COURT: Okay? In the same phase of the trial the
16 defense would likely present evidence that there were features
17 about this crime or about the defendant himself personally that
18 made the death penalty an inappropriate punishment and that
19 life imprisonment was the proper punishment. So you'd have
04:33 20 aggravating factors and mitigating factors.

21 The jurors would be asked to consider all of that
22 evidence and then each individual juror would be asked to
23 decide whether she thought that the death penalty was the
24 appropriate punishment or life in prison without possibility of
25 release was the appropriate punishment.

1 Would you be able to listen to the evidence, consider
2 it and reserve judgment about which penalty is imposed until
3 you're finished?

4 THE JUROR: Yes. Yes.

5 THE COURT: And if you thought that the death penalty
6 was the right penalty, could you vote to impose it?

7 THE JUROR: Yes.

8 THE COURT: Go ahead.

9 MR. WEINREB: Good afternoon.

04:33 10 THE COURT: Can I just ask one thing before -- we can
11 come back -- the last question. You indicated on page 26 in
12 Question 98 that you were concerned about transportation?

13 THE JUROR: I don't drive yet. I hope to get a
14 license this summer.

15 THE COURT: Well, that will be too late for the case.

16 THE JUROR: Right.

17 THE COURT: How did you get here today?

18 THE JUROR: My son-in-law took me.

19 THE COURT: I think there's probably public
04:34 20 transportation from Framingham.

21 THE JUROR: Yes.

22 THE COURT: Have you explored that? I think there's
23 both buses and maybe trains.

24 THE JUROR: Yes, there is.

25 THE COURT: Would that satisfy --

1 THE JUROR: Yes.

2 THE COURT: Okay. Go ahead.

3 MR. WEINREB: Good afternoon.

4 THE JUROR: Good afternoon.

5 MR. WEINREB: My name is Bill Weinreb. I'm one of the
6 prosecutors in the case. I'd just like to ask you a few
7 follow-up questions.

8 THE JUROR: Okay.

9 MR. WEINREB: So I'd just like to review some of these
04:34 10 questions relating to the death penalty to make sure I
11 understand what your views are.

12 So with respect to Question 88, if you'd take a look
13 at that. It's on page 23. That's the one where you wrote
14 "It's not right to kill."

15 THE JUROR: Yes.

16 MR. WEINREB: And then 89 you wrote that on a scale of
17 1 to 10, about your feelings about the death penalty, that you
18 strongly oppose it.

19 THE JUROR: Yes.

04:35 20 MR. WEINREB: So nobody's asking you to -- you're
21 entitled to your views. Here the questions aren't -- it seemed
22 earlier when you were asked about some of these things you were
23 having a little trouble figuring out the reasons.

24 THE JUROR: Yes.

25 MR. WEINREB: And you're entitled to your views about

1 the death penalty. You don't have to give any reasons for
2 them. Your views are yours. What we're trying to figure out
3 here is whether -- if you were a juror in a death penalty case,
4 whether your feelings are so strong that they would cause you
5 to vote against the death penalty in every case. In other
6 words, if you're a juror in a death penalty case, at the end of
7 the whole case you personally have to make a decision about
8 whether to vote to impose the death penalty on somebody.

9 THE JUROR: Yes.

04:36 10 MR. WEINREB: Given your strong feelings that you're
11 opposed to it, that it's not right to kill, could you still
12 vote, if you believed it was the appropriate sentence, to send
13 someone to death?

14 THE JUROR: Yes.

15 MR. WEINREB: Okay. And can you give us an example of
16 what would be -- something that would be --

17 MR. BRUCK: I object to this. That's not required.

18 THE COURT: Yes, sustained.

19 MR. WEINREB: Can you imagine cases in which you would
04:36 20 find the death penalty to be appropriate enough that you could
21 vote to send -- give someone the death penalty?

22 THE JUROR: Yes. If I knew what was going on, if they
23 explained everything to me, you know, why he should be put to
24 death. What I'm saying is I don't know anything about this
25 case. I don't know much about it at all.

1 MR. WEINREB: Of course. And nobody's asking about
2 this case or whether this defendant should get the death
3 penalty. This is a different question.

4 THE JUROR: Yes.

5 MR. WEINREB: Which is when you say you could do it, I
6 guess what I'm trying to get at here is: Is it just a
7 theoretical possibility or can you imagine cases on -- can you
8 imagine that there would be a case --

9 MR. BRUCK: Asked and answered.

04:37 10 MR. WEINREB: -- in which you heard all the evidence
11 and at the end of it you decided that it was appropriate
12 to -- for you to vote for the death penalty?

13 THE JUROR: Yes.

14 MR. WEINREB: Okay.

15 (Counsel confer off the record.)

16 MR. WEINREB: Let me direct your attention to Question
17 95 now on page 25. So that question -- I thought maybe you
18 were struggling to read it before.

19 THE JUROR: Which one?

04:38 20 MR. WEINREB: Question 95 at the bottom of page 25.

21 THE JUROR: Yes.

22 MR. WEINREB: I'll just read it out loud. So the
23 question is, "If you found Mr. Tsarnaev guilty" -- so now we're
24 talking about this case. "If you found Mr. Tsarnaev guilty and
25 you decided that the death penalty was the appropriate

1 punishment for Mr. Tsarnaev, could you conscientiously vote for
2 the death penalty," and you wrote "no."

3 THE JUROR: Right.

4 MR. WEINREB: Is that true?

5 THE JUROR: Yes.

6 MR. WEINREB: You could not vote for it?

7 THE JUROR: No.

8 MR. BRUCK: May I?

9 THE COURT: Yeah, in a minute.

04:38 10 So I understand your answer to that. You answered
11 that before. But you've also answered that you could. And so
12 we know that it's hard to speculate. You haven't heard the
13 evidence that you ultimately will hear. We're not asking you
14 to commit to one position or another.

15 THE JUROR: Right.

16 THE COURT: This is really kind of an assessment of
17 whether your beliefs are such that you envision the possibility
18 that if you found the right facts to be the case, that you
19 could decide to vote affirmatively in favor of the death
04:39 20 penalty and, therefore, support the imposition of the death
21 penalty. Could you do that? That's the question.

22 THE JUROR: No. I'm sorry.

23 THE COURT: Okay. Mr. Bruck?

24 MR. BRUCK: Thank you. Good afternoon. You've never,
25 I'm sure -- my name is David Bruck. I'm one of Mr. Tsarnaev's

1 attorneys. And I've just got a few more questions so that
2 we're all completely sure we understand your feelings about
3 this.

4 You've served on a jury before?

5 THE JUROR: Yes.

6 MR. BRUCK: So you know that jurors, if they possibly
7 can, have to have an open mind?

8 THE JUROR: Yes.

9 MR. BRUCK: And that's what all of this is about.

04:40 10 That's what all of these questions about the death penalty are
11 about.

12 Could you have an open mind about the death penalty on
13 the one hand or life in prison on the other?

14 THE JUROR: Yes.

15 MR. BRUCK: Okay. The last question that Mr. Weinreb
16 was asking you, and I know the judge was asking you, was if you
17 approached the sentencing part of the trial with an open mind
18 and you decided that the death penalty was the right punishment
19 to impose after hearing all the evidence in the case, could you
04:40 20 vote for that verdict if -- do you see what I'm asking?

21 THE JUROR: Yes.

22 MR. BRUCK: Could you vote for it?

23 THE JUROR: Yes, I could.

24 MR. BRUCK: And on the other hand, if you found that
25 life imprisonment was the right thing after you considered all

1 the evidence --

2 THE JUROR: Yes.

3 MR. BRUCK: -- could you vote for life imprisonment if
4 that was what the evidence told you the right thing was?

5 THE JUROR: Yes.

6 MR. BRUCK: So would your vote depend on the evidence
7 in the case?

8 THE JUROR: Yes, it would.

9 MR. BRUCK: Okay. And your beliefs about the death
04:41 10 penalty, would that stop you from voting the way the evidence
11 convinced you you should vote?

12 THE JUROR: No.

13 MR. BRUCK: Okay. You'd be guided by the evidence?

14 THE JUROR: Yes.

15 MR. WEINREB: Objection.

16 THE COURT: Yeah, that's leading.

17 MR. BRUCK: And that's all I have. Thank you.

18 MR. WEINREB: Your Honor, can we --

19 THE COURT: No, I think we've been over it.

04:41 20 Thank you very much.

21 THE JUROR: Thank you.

22 THE COURT: We'll talk about...

23 (The juror exits the courtroom.)

24 THE COURT: I think we'll take a break at this point.

25 Two o'clock okay?

1 MR. BRUCK: Sure.

2 THE COURT: About 45 minutes?

3 MS. CLARKE: Yes, no, yes, no.

4 THE COURT: Are you sure?

5 (Laughter.)

6 MS. CLARKE: I'm unsure.

7 MR. BRUCK: May I follow up?

8 THE COURT: We're off.

9 (The Court exits the courtroom and there is a recess
04:42 10 in the proceedings at 1:13 p.m.)

11 (After the recess:)

12 (The Court entered the courtroom at 2:10 p.m.)

13 THE CLERK: Juror 394.

14 THE JURY CLERK: Juror No. 394.

15 THE CLERK: Ma'am, over here, please, if you would.
16 Have a seat right here.

17 THE COURT: Good afternoon.

18 THE JUROR: Good afternoon.

19 THE COURT: Since you were last here, have you been
05:42 20 able to avoid any discussion of the substance of the case?

21 THE JUROR: I have done my best to do so.

22 THE COURT: How good was that?

23 THE JUROR: Pretty good.

24 THE COURT: And also avoid any media coverage?

25 THE JUROR: That's correct.

1 THE COURT: Thank you. So we're just following up on
2 some of the answers you gave us. Tell us a little bit about
3 your work as a teacher.

4 THE JUROR: I'm a preschool teacher. I teach children
5 ages between three and five.

6 THE COURT: And we asked about social media. You seem
7 not to be a user of social media.

8 THE JUROR: I am not.

9 THE COURT: Question 31 on Page 11, you indicated that
05:43 10 the daughter of your best friend is in the Army Reserves and
11 served in Afghanistan for ten months.

12 THE JUROR: That's correct.

13 THE COURT: How recently was that, do you know?

14 THE JUROR: Two years ago.

15 THE COURT: Did she see -- I guess you said it in the
16 next question. She didn't see combat. She was in a noncombat
17 role?

18 THE JUROR: That's correct.

19 THE COURT: On the next page, in Question 35, you say
05:43 20 you have a friend who works in a state prison.

21 THE JUROR: That's correct.

22 THE COURT: Massachusetts?

23 THE JUROR: Yes.

24 THE COURT: In what capacity?

25 THE JUROR: It's the Plymouth --

1 THE COURT: What's the friend do?

2 THE JUROR: They work in the agricultural area, the
3 farm. They were in the control room before that.

4 THE COURT: Okay. What do they do in the agricultural
5 unit?

6 THE JUROR: The prisoners come and they --

7 THE COURT: They supervise --

8 THE JUROR: They supervise the prisoners.

9 THE COURT: He or she --

05:44 10 THE JUROR: He.

11 THE COURT: -- supervises prisoners doing agricultural
12 things?

13 THE JUROR: That's correct.

14 THE COURT: The next question, we asked whether you
15 would have a tendency to give greater or lesser weight to
16 testimony from somebody who's a law enforcement officer. You
17 said you thought you would.

18 THE JUROR: Yes.

19 THE COURT: Can you tell us about that?

05:44 20 THE JUROR: I believe just growing up it's the
21 authority and believing in those who are entitled -- those who
22 are law enforcement officers and believing in that they're
23 there to protect us, and we do as we're told.

24 THE COURT: Well, in a trial, of course, you're
25 evaluating evidence given by any number of people in a wide

1 range of occupations and so on. You think you would not be
2 able to be a critical judge of law enforcement testimony the
3 way you would be of other professions?

4 THE JUROR: Most likely.

5 THE COURT: You would not be able?

6 THE JUROR: I would not be able to.

7 THE COURT: Let me ask you to turn to Page 19,
8 Question 75. We asked whether you had said things to people
9 when you learned that you might have service on this case. And
05:45 10 you wrote that, "I have said that the defendant is guilty. I
11 could not be impartial."

12 THE JUROR: That's correct.

13 THE COURT: Is that your frame of mind?

14 THE JUROR: Yes, it is.

15 THE COURT: You don't think that could be changed?

16 THE JUROR: No.

17 THE COURT: Okay. Thank you.

18 THE JUROR: Thank you.

19 THE CLERK: Juror No. 395.

05:46 20 THE JURY CLERK: Juror 395.

21 THE CLERK: Ma'am, over here, please. Have a seat if
22 you would.

23 THE JUROR: Thank you.

24 THE COURT: Good afternoon.

25 THE JUROR: Good afternoon.

1 THE COURT: Since you were last here, have you been
2 able to avoid talking about the substance of the case with
3 other people?

4 THE JUROR: Pretty much, yes.

5 THE COURT: Tell me how much "pretty much" is?

6 THE JUROR: I've been in situations but have gotten up
7 and excused myself.

8 THE COURT: Good. And similarly with media reports
9 about the case, have you been able to turn away if you've run
05:47 10 across one?

11 THE JUROR: Yes.

12 THE COURT: You're employed as a legal executive
13 assistant for a law firm in Boston.

14 THE JUROR: That's correct.

15 THE COURT: Looks like you've been doing it for quite
16 awhile.

17 THE JUROR: Yes, I have.

18 THE COURT: So you now support actually the managing
19 director. Is that what they call the partner in charge?

05:47 20 THE JUROR: Yes, yes, in the corporate division.

21 THE COURT: I see. Managing of the corporate?

22 THE JUROR: Yes.

23 THE COURT: Have you been supporting people in the
24 corporate side mostly in your career, or have you gone in
25 other --

1 THE JUROR: Prior to this, I worked for 30 years for
2 an attorney that did, first, commercial real estate and leasing
3 and then went into estate planning and probate. And then the
4 last four years has been with the corporate department.

5 THE COURT: But not litigators?

6 THE JUROR: No, never a litigator.

7 THE COURT: We asked about social media. You say you
8 use Facebook intermittently to very rarely.

9 THE JUROR: Correct.

05:48 10 THE COURT: Give us a little bit of an idea of that.

11 THE JUROR: I don't really know how to post anything.
12 So I can read what is posted, but I've never posted anything
13 myself.

14 THE COURT: Okay. Let me ask you to turn to Page 20.

15 THE JUROR: I don't have Page --

16 THE COURT: It might be out of order.

17 THE JUROR: Okay. Here it is.

18 THE COURT: It's actually -- in my copy, it's between
19 18 and 19.

05:49 20 Question 77, there we asked whether, as a result of
21 what you'd seen or read in the news media or elsewhere, had you
22 formed an opinion about various matters including, (a), that
23 the defendant was guilty or (b), he was not and then about the
24 penalty. And you indicated, yes, you had formed an opinion
25 that he was guilty.

1 We then down below, in the second part of the
2 question, asked, If you answered yes to any of these questions,
3 would you be able or unable to set aside your opinion and base
4 your decision about guilt solely on the evidence that will be
5 presented to you in court? And you selected the box that said
6 "able."

7 THE JUROR: Yes.

8 THE COURT: Can you tell us about that?

9 THE JUROR: I believe that -- I have formed an opinion
05:50 10 up until this point based on what I did read and had seen in
11 the media, but I realize that that's not all the information
12 that would be available to me. So once more -- once I had more
13 information, I believe that, you know, I could change my mind
14 based on what I had read at the time.

15 THE COURT: Yeah. It's understandable, given the
16 amount of coverage that there has been, that people have formed
17 impressions about things. What we ask jurors to do, if they're
18 serving in a case, is to focus their attention on the evidence
19 that is actually produced in the trial and make their decision
05:51 20 based on that body of evidence without importing into it other
21 ideas from other sources.

22 THE JUROR: Correct.

23 THE COURT: You think you would be able to observe
24 that discipline if you were a juror in the case?

25 THE JUROR: I do.

1 THE COURT: I'm sure you know that in our criminal
2 process a person who's accused of a crime is presumed innocent
3 unless the government proves that he's guilty by the body of
4 evidence at the trial and proves it beyond a reasonable doubt.
5 Do you think you would have any difficulty in faithfully
6 applying those principles of the presumption of innocence and
7 proof beyond a reasonable doubt?

8 THE JUROR: No, I don't.

9 THE COURT: Let me ask you to look at Question 78.
05:51 10 You said you don't talk about this with your husband because
11 the conversations can become too heated. Is it only he who has
12 strong views, or do you have them, too?

13 THE JUROR: Actually, it's not -- my husband and I
14 wouldn't discuss this just one on one. It would be more in a
15 social setting.

16 THE COURT: And other people would be there?

17 THE JUROR: And other people, right, and --

18 THE COURT: I was thinking you might have meant one on
19 one. Then I was going to ask really whether you thought, if
05:52 20 your husband had strong views and they were different than
21 yours, whether that would affect your service.

22 THE JUROR: No, I do not.

23 THE COURT: Just going back to Question 77, as to the
24 (c) and (d) parts of the question, about the death penalty, you
25 indicated "unsure."

1 THE JUROR: Uh-huh.

2 THE COURT: You don't have any present opinion about
3 that.

4 THE JUROR: I do not.

5 THE COURT: Okay. So we asked a series of questions
6 about the death penalty to get jurors' attitudes. That begins
7 on Page 23, at Question 88. Question 88 itself asks, If you
8 have any views on the death penalty, in general, what are they?
9 And you said, "I would need to hear and know all the facts
05:53 10 before committing either for or against the death penalty.
11 I've always thought I was against it, but when you really have
12 to think about it, things change." Can you amplify on that a
13 little bit?

14 THE JUROR: I think it's easy to have what you feel
15 are strong opinions about something; but then once you're in a
16 situation that it actually could be a possibility and you think
17 about it from that perspective, it kind of opens up a whole
18 different dialogue within yourself.

19 THE COURT: In the next question, we asked you to
05:53 20 locate where you think you would be on a spectrum from 1 to 10,
21 where 1 was someone who is strongly opposed and believed that
22 the death penalty should never be imposed; and 10 reflected
23 somebody who's strongly in favor and believed it should be
24 imposed whenever a defendant is convicted of intentional
25 murder. You chose 5, to indicate you were somewhere in the

1 middle of all that, is that correct?

2 THE JUROR: That is correct.

3 THE COURT: Turn the page to the next page, 90. Here
4 we asked you to select from a series of statements which one
5 you thought best described your feelings about the death
6 penalty for someone convicted of murder. You selected (d).

7 "I'm not for or against the death penalty. I could vote to
8 impose it, or I could vote for a sentence of life imprisonment
9 without the possibility of release, whichever I believed was
05:54 10 called for by the facts and the law of the case." Do you think
11 that best sums up your state of mind?

12 THE JUROR: I do.

13 THE COURT: And then in the bottom of Page 25, at
14 Question 95, we asked -- focusing perhaps on this case a bit
15 more particularly than those other questions did -- If you
16 found this defendant guilty and you decided that the death
17 penalty was the appropriate punishment for him, could you
18 conscientiously vote for the death penalty? And you said, "I'm
19 not sure." Go to the top of 96. There we ask a similar
05:55 20 question. If you found the defendant guilty and you decided
21 life imprisonment without the possibility of release was the
22 appropriate punishment, could you conscientiously vote for that
23 sentence? And you said "yes" to that. So there's a little bit
24 of a difference between your answers to the two questions.

25 THE JUROR: I think that -- I think that, when I was

1 filling these questions out and thinking about it, I -- in my
2 mind I was thinking that, for me, there are different degrees
3 of guilt. And I don't know what -- where this falls without
4 knowing all of the information. So my thought process was just
5 that, for me, I believe there are different degrees of guilt.

6 THE COURT: Well, you heard this morning that I
7 described in brief the process after a person has been
8 convicted of murder. And that would be the predicate. You
9 don't get to the penalty, obviously, until the jury has already
05:56 10 found the person guilty of intentional murder, right?

11 THE JUROR: Uh-huh.

12 THE COURT: And at that point, as I said, you'd hear
13 aggravating factors that might make the case more serious or
14 more blameworthy. And you might hear other mitigating factors
15 that might explain why the death penalty was inappropriate and
16 life imprisonment was an appropriate and sufficient sentence.

17 THE JUROR: Uh-huh.

18 THE COURT: And on the basis of all that, the jurors
19 would be asked to decide whether they thought the death penalty
05:56 20 should be imposed or life imprisonment without the possibility
21 of release. So, obviously, it's difficult to predict what you
22 would do in the future on an unknown --

23 THE JUROR: Right.

24 THE COURT: -- base of information.

25 THE JUROR: Yes.

1 THE COURT: But can you tell us whether you think you
2 would be prepared to listen to that evidence and be open to
3 being persuaded in either direction?

4 THE JUROR: I would be, yes.

5 THE COURT: Okay.

6 MR. WEINREB: Good afternoon.

7 THE JUROR: Hi.

8 MR. WEINREB: My name it Bill Weinreb. I'm one of the
9 prosecutors in the indicates.

05:57 10 THE JUROR: Hello, Mr. Weinreb.

11 MR. WEINREB: I just want to follow up on one thing
12 here on that Question 95 just to make sure I understand. So
13 Question 95 assumes that the penalty phase is over. You've
14 heard evidence from the government suggesting that the death
15 penalty is the appropriate sentence, and you've heard evidence
16 from the defense suggesting that it's not the appropriate
17 sentence. And now you've come to the decision in your mind
18 that you believe it is the appropriate sentence. This is just
19 the assumption.

05:57 20 THE JUROR: Uh-huh.

21 MR. WEINREB: The question is: Having come to that
22 belief in your mind, would you actually be able to do it, to
23 vote to send somebody to death?

24 THE JUROR: If I came to that decision based on the
25 facts that were presented to me, yes.

1 MR. WEINREB: Thanks very much.

2 THE JUROR: Sure.

3 MS. CLARKE: Hi. Good afternoon. My name is Judy
4 Clarke. I'm one of Mr. Tsarnaev's lawyers.

5 THE JUROR: Hi, Miss Clarke.

6 MS. CLARKE: I just wanted to ask you a few things if
7 I could. You mentioned in 77, and you talked to the Judge --
8 and you're right. Your questionnaire goes from Page 18 to 20
9 and then 19. There you go.

05:58 10 You mentioned that the conversations become too
11 heated. What do they get heated about?

12 THE JUROR: Just people -- various people's opinions
13 as to what happened, what should happen, where -- you know,
14 where things went wrong, what -- you know, just basic
15 communications over the days that followed.

16 MS. CLARKE: So what happened to the community and to
17 -- on Boylston and what should happen in the future?

18 THE JUROR: Not so much the future but just what the
19 -- the events that had just happened and how -- why it
05:59 20 happened. Everyone, you know, had an opinion as to why it
21 happened and how it happened. And so -- and if you tend not to
22 agree with some people, they get upset.

23 MS. CLARKE: So you do what?

24 THE JUROR: I'm sorry?

25 MS. CLARKE: You do what? Avoid the conversation?

1 THE JUROR: Well, I think that I try to steer the
2 conversation away from that. In a social setting, you know,
3 let's not discuss politics or religion.

4 MS. CLARKE: Probably a good --

5 THE JUROR: That's kind of where we try to put things.

6 MS. CLARKE: If you're -- have you served on a jury
7 before? I can't remember.

8 THE JUROR: I have not.

9 MS. CLARKE: If you're in a -- on a jury, it could get
05:59 10 heated. The debate could get heated. How do you think you
11 would deal with that? Just tell everybody to quiet down?

12 THE JUROR: Everyone is entitled to their opinion; and
13 in a jury setting, it's much different than a social setting.

14 MS. CLARKE: Sure.

15 THE JUROR: And people have much more of the facts
16 than they do in a social setting. So I think that the
17 conversation would be much more knowledgeable of the people
18 involved.

19 MS. CLARKE: At least a little more informed?

06:00 20 THE JUROR: Yes.

21 MS. CLARKE: Have the people who have had these heated
22 conversations involving you, I guess --

23 THE JUROR: Involving this situation.

24 MS. CLARKE: You just happen to be there?

25 THE JUROR: Yes.

1 MS. CLARKE: Participating in the conversation?

2 THE JUROR: Well, yes, with friends.

3 MS. CLARKE: Have there been opinions expressed about
4 the death penalty in this case?

5 MR. WEINREB: Objection.

6 THE COURT: Sustained.

7 MS. CLARKE: Have there been any opinions expressed
8 that influence you one way or the other?

9 THE JUROR: No.

06:00 10 MS. CLARKE: It was interesting, in 88, which is Page
11 23, where you wrote, "I always thought I was against it," the
12 death penalty, "but when you really have to think about it,
13 things change." What prompted that thinking?

14 THE JUROR: I don't think that I was in a -- that I'm
15 in a position, without hearing all of the facts, to say that I
16 am either for it or against it at this point. It's easy for me
17 to say, yes, I believe that a person should have -- should have
18 the death penalty; but when you're faced with that may be a
19 real possibility that I would have to decide, then -- and you
06:01 20 start -- and I start thinking about it in those terms, then
21 it's difficult for me to say.

22 MS. CLARKE: Sure. And I guess, when you filled this
23 out, you were beginning to think about --

24 THE JUROR: Correct.

25 MS. CLARKE: -- the death penalty. In this case or

1 just generally?

2 THE JUROR: I would have to say, when I filled this
3 out, it was in this case.

4 MS. CLARKE: Okay. Your work at the law firm, I don't
5 think anybody asked you. Is that a hardship for you if you
6 were sitting for three or four months here with the rest of us?

7 THE JUROR: I mean, I've discussed it with my
8 employer, and they're aware of it. I don't think -- I think
9 that, for every juror, it would be a hardship to be on a case
06:02 10 such -- such a lengthy case.

11 MS. CLARKE: Would you --

12 THE JUROR: But they have said that it would be fine.

13 MS. CLARKE: And you would be paid?

14 THE JUROR: Correct.

15 MS. CLARKE: So there's not a financial crunch for
16 you?

17 THE JUROR: Yes.

18 MS. CLARKE: Okay. Could I just -- one moment, your
19 Honor?

06:02 20 (Discussion held off the record.)

21 MS. CLARKE: If I can go back to 88 and just to sort
22 of make clear in our minds, your position before this case on
23 the death penalty, did you have one abstractly, as a matter of
24 policy or as a matter of law?

25 THE JUROR: I would say that I would probably lean

1 towards being against it, but I can't say that I was set in
2 that.

3 MS. CLARKE: You were open to both?

4 THE JUROR: Correct.

5 MS. CLARKE: Life imprisonment or the death penalty
6 outside of this case?

7 THE JUROR: Correct.

8 MS. CLARKE: And remain open to both inside of this
9 case?

06:03 10 THE JUROR: That is correct.

11 MS. CLARKE: Thank you very much.

12 THE COURT: All right. Thanks. Just leave it there.
13 We'll put it back together.

14 THE JUROR: Thank you.

15 THE CLERK: Juror No. 396.

16 THE JURY CLERK: Juror No. 396.

17 THE CLERK: Ma'am, over here, please. Have a seat.

18 THE COURT: Good afternoon.

19 THE JUROR: Hi.

06:05 20 THE COURT: Since you were last here, have you been
21 able to avoid talking with people about the substance of the
22 case?

23 THE JUROR: Yes.

24 THE COURT: And also, as much as possible, any media
25 reporting on the case?

1 THE JUROR: Yes.

2 THE COURT: So we're following up with information we
3 got from the questionnaire just to learn a few things more. We
4 see you're a senior business analyst for an insurance company.

5 THE JUROR: Yes.

6 THE COURT: And you've been doing that for quite
7 awhile, I guess.

8 THE JUROR: Yes.

9 THE COURT: Tell us what the job involves in general
06:05 10 terms.

11 THE JUROR: Software, I do software testing and write
12 requirements for new software.

13 THE COURT: Okay. For use in the business?

14 THE JUROR: Yes.

15 THE COURT: So adapting --

16 THE JUROR: Claim systems, claim and reserving
17 systems.

18 THE COURT: I see, okay. All right. Pretty much the
19 same thing over your time with the company?

06:06 20 THE JUROR: Yeah.

21 THE COURT: We asked about social media use. You said
22 you sometimes, but rarely, use Facebook.

23 THE JUROR: Yeah, very rarely. I have like --

24 THE COURT: Sounds like you don't like it.

25 THE JUROR: I have 30 friends, and I will look at

1 their posts for ten minutes at night. That's it. I work on a
2 computer, all day so I'm not on the computer at night.

3 THE COURT: Fair enough. Your brother served as a Navy
4 pilot.

5 THE JUROR: Yes.

6 THE COURT: When, approximately?

7 THE JUROR: I don't --

8 THE COURT: You said for ten years so --

9 THE JUROR: Out of college. He went to military
06:06 10 college and then into the Navy.

11 THE COURT: Okay. Was he ever in combat?

12 THE JUROR: No.

13 THE COURT: Let me ask you to turn to Page 19. At the
14 bottom, Questions 74 and 75, we asked a little bit about what
15 you thought and what people may have said when you -- or you
16 may have said when you learned that you might be a prospective
17 juror in this case. In 74, you said you were interested in the
18 case, also how disruptive it would be.

19 And then in the next question about what kinds of
06:07 20 things you said to others or others said to you, you had some
21 other concerns about work and, I guess, a course you're taking.

22 THE JUROR: Yup.

23 THE COURT: We had asked earlier in the questionnaire
24 -- if you want to go back to Page 5, Question 10, we set out
25 this -- what we thought the schedule would be, and it still

1 would follow this pattern. And then on that schedule, the
2 trial could last three or four months possibly. We asked if
3 this would be a substantial or special hardship on you as
4 opposed to the necessary hardship any juror would feel. I'm
5 just -- you said "no" to that question.

6 THE JUROR: I think I understood "special hardship" as
7 something else.

8 THE COURT: Tell us about what you were referring to
9 in 74 and 75 and how much of an impact it would be on you.

06:08 10 THE JUROR: You know, I have two kids at home and one
11 away at college, and I have doctors' appointments and sports
12 appointments and college applications, and I work 80 hours a
13 week, and I'm training new staff. So I think the general
14 hardship for anybody.

15 THE COURT: Would it be a financial cost to you?

16 THE JUROR: No.

17 THE COURT: In other words, would you stop getting
18 paid?

19 THE JUROR: No.

06:09 20 THE COURT: Is it in the nature of one more thing to
21 juggle? Is that the kind of thing?

22 THE JUROR: Yeah, in the middle of juggling, like, a
23 million things.

24 THE COURT: Tell me about the class.

25 THE JUROR: I'm taking an advanced networking class so

1 I waited -- I was waiting to see before I registered, and I
2 couldn't wait any longer.

3 THE COURT: Tell me about it.

4 THE JUROR: So I take a class at Bentley College.
5 It's a networking computer class.

6 THE COURT: When is it? When do you take it?

7 THE JUROR: Thursday nights.

8 THE COURT: What time?

9 THE JUROR: 7:30 to 10:30. And it's my last class.

06:09 10 THE COURT: Then you get a certificate or degree?

11 THE JUROR: Degree.

12 THE COURT: Bachelor's degree?

13 THE JUROR: Yeah.

14 THE COURT: Let me ask you to turn to Page 20.

15 THE JUROR: Uh-huh.

16 THE COURT: Question 77, near the top. In this
17 question we asked whether -- based on things you'd seen or read
18 in the news or learned from other sources, whether you had
19 formed an opinion in Subpart (a) that the defendant was guilty
06:10 20 and then (b), or not guilty, and then some questions about
21 potential penalty in (c) and (d). You checked -- to Part (a),
22 you said "yes," you had formed an opinion that he was guilty.

23 THE JUROR: Based on what I've seen.

24 THE COURT: Right. Then down below we asked, in the
25 second part of the question, If you answered yes to any of

1 these questions, would you able or unable to set aside your
2 opinion and base your decision about guilty solely on the
3 evidence that would be presented to you in court, and you said
4 "able."

5 THE JUROR: Where is that?

6 THE COURT: Right above 78, the second part of 77.

7 THE JUROR: Yes, that's true.

8 THE COURT: So could you tell us what led you to
9 answer the question the way you did?

06:11 10 THE JUROR: Which question?

11 THE COURT: The second part there, the "able."

12 THE JUROR: I think I can listen to, you know, the
13 evidence of the case and just consider that despite what I've
14 seen.

15 THE COURT: Okay. You, I'm sure, understand that a
16 defendant in a criminal case is presumed innocent, or not
17 guilty, until the government proves that he's guilty by the
18 evidence at the trial.

19 THE JUROR: Yup.

06:11 20 THE COURT: And proves it beyond a reasonable doubt.
21 That's what we ask jurors to do, to pay attention to that body
22 of evidence and decide whether on that evidence the government
23 has proved the person guilty of what he's charged with or not,
24 right?

25 THE JUROR: Yeah.

1 THE COURT: You think you would be able to follow
2 those principles?

3 THE JUROR: I think I would, yes.

4 THE COURT: Let me ask you about your answer to
5 Question 80, at the bottom of the page. Your brother was in
6 the Copley Square area about the time that the bombs --

7 THE JUROR: Uh-huh.

8 THE COURT: -- were exploded?

9 THE JUROR: Yup.

06:12 10 THE COURT: And he's told you about it a little bit?

11 THE JUROR: Yeah.

12 THE COURT: You said he described it?

13 THE JUROR: Yeah.

14 THE COURT: Would the fact that he was nearby the
15 incident, would that have any effect on your impartiality as a
16 juror?

17 THE JUROR: No. He was okay and his family running
18 the race -- everybody was okay.

19 THE COURT: You had people in the race?

06:12 20 THE JUROR: Yes. My sister-in-law's brother had
21 already crossed the finish line.

22 THE COURT: Okay. On the next page, you sheltered in
23 place?

24 THE JUROR: Yes.

25 THE COURT: On that -- at the end of that week?

1 THE JUROR: Uh-huh.

2 THE COURT: Then you or others in your family have
3 engaged in various support activities. Can you tell us a
4 little bit about that, what you did yourself or what others
5 did?

6 THE JUROR: Yeah. I took my kids into the memorial in
7 Copley Square. We bought T-shirts, wrist bands, hats --

8 THE COURT: When did you do that?

9 THE JUROR: -- all Boston Strong. Shortly after -- I
06:13 10 don't remember the dates but --

11 THE COURT: Not the exact day.

12 THE JUROR: Within the year following.

13 THE COURT: Was it right after? Was it a couple
14 months after?

15 THE JUROR: Some of it was right after. Some -- I
16 think a bakery in Somerville did a fund-raiser for Sean
17 Collier, so we went there and bought -- so it's ongoing. As
18 things come up, we may or may not go to them today.

19 THE COURT: Do you keep an eye out for things like
06:13 20 that to go to, or they just get your attention and you decide
21 to go?

22 THE JUROR: Yeah. No. I don't keep an eye out for
23 them.

24 THE COURT: Have you organized any responses like
25 that?

1 THE JUROR: No.

2 THE COURT: Just kind of contributed and participated
3 that way?

4 THE JUROR: (Nodding.)

5 THE COURT: Let me ask you to look at Page 23.

6 Beginning with Question 88, we asked a series of questions to
7 gauge jurors' attitudes about the death penalty both in general
8 and perhaps in this case. Question 88 is about your views in
9 general, and it asks, If you have them, would you summarize
06:14 10 them? You said, "In general, I believe in the death penalty.
11 I'm not sure I personally could impose it." Could you tell us
12 about that?

13 THE JUROR: Well, I actually never really thought
14 about me personally having to sentence someone to death before
15 this.

16 THE COURT: Right.

17 THE JUROR: So I've always been a general supporter
18 that, if necessary, the death penalty is a valid tool, I guess,
19 for law enforcement or the courts. But, you know, I don't
06:15 20 know. I don't know. I'm a Catholic. I'm not sure it's up to
21 me personally to decide who lives or dies. Again, I thought
22 just two days ago, if this were one of my kids that was killed
23 in this bombing, I could have a whole -- I just don't know.
24 I'm not sure how I would decide that.

25 THE COURT: So in the next question, we asked you to

1 put yourself on a scale from 1 to 10, where 1 is strongly
2 opposed and reflects a belief that the death penalty should
3 never be imposed; 10, strongly in favor and reflects a view
4 that the death penalty should be imposed whenever a defendant
5 has been convicted of an intentional murder. And you selected
6 8, a little bit towards the favor side.

7 THE JUROR: Yeah. I mean, I favor it. I'm just not
8 sure I can do it.

9 THE COURT: You wrote in "must be of a heinous
06:15 10 nature."

11 THE JUROR: Yeah. This said "should be imposed
12 whenever the defendant has been convicted of an intentional
13 murder."

14 THE COURT: So did you mean to qualify that by saying
15 not just any intentional murder; it has to be a heinous one?
16 Is that what you meant?

17 THE JUROR: Yes, that's what I meant.

18 THE COURT: Then Question 90, we asked to you look at
19 a series of possible statements and see if there was one that
06:16 20 adequately described your feelings about the death penalty.
21 And you didn't find one that you could agree with, I guess.
22 You said, "None of the statements above really describes my
23 feelings." Then, again, you wrote in, "I'm in favor of the
24 death penalty but not sure I could impose it." That's what
25 you've already told us, right?

1 THE JUROR: Yup.

2 THE COURT: Then if you would go to the next page,
3 Question 95, at the bottom, focusing now more particularly on
4 this case, the question asks, If you found this defendant
5 guilty and decided that the death penalty was the appropriate
6 punishment for him, could you conscientiously vote for the
7 death penalty? And you wrote, "I'm not sure." Right?

8 THE JUROR: Right.

9 THE COURT: That's, I guess, what you've been telling
06:17 10 us.

11 THE JUROR: I'm still not sure.

12 THE COURT: Just to finish the questionnaire for a
13 minute, Question 96, we asked you, If you found this defendant
14 guilty and decided life imprisonment without the possibility of
15 release was appropriate, could you conscientiously vote for
16 that punishment? And you said "yes."

17 THE JUROR: Right.

18 THE COURT: You heard me this morning describe in
19 general terms the process of a penalty phase after someone's
06:17 20 been convicted. You don't get to the penalty, of course, until
21 the person has been convicted, right?

22 THE JUROR: Right.

23 THE COURT: And that there would be evidence that the
24 government would offer of what we call aggravating factors that
25 made this crime seem worse than many and perhaps particularly

1 blameworthy, and the government would argue that. You would
2 have evidence from the defense that, for various reasons, there
3 are mitigating circumstances about the events, about the person
4 of the defendant himself and so on. And we asked the jury then
5 to consider all of that and decide, between the two options
6 that is are presented: the death penalty and life
7 imprisonment. Do you think you could deliberate upon that
8 evidence with an open mind to returning a verdict in either
9 direction or not?

06:18 10 THE JUROR: I don't know if I could return a death
11 sentence verdict. I don't know that I can do that.

12 THE COURT: And that's -- I don't want to put words in
13 your mouth. But is it because of your views of morality and
14 what's proper or views about --

15 THE JUROR: You know, I don't know. That's how I
16 thought of it at first, that it's really not up to me to decide
17 who lives or dies. But as I thought more about my own
18 children, I think I would have a different view. So I'm just
19 -- I think in my own heart I'm conflicted about --

06:19 20 THE COURT: You remember -- and we talked about it in
21 Question 89 -- I think it was 89 -- you added the qualification
22 that not only the defendant was convicted of murder but it must
23 be of a heinous nature. If you thought that the evidence
24 showed a crime of a heinous nature, do you think you would be
25 able to vote for the death penalty in that circumstance?

1 THE JUROR: I don't know.

2 THE COURT: Okay.

3 MR. WEINREB: Good afternoon.

4 THE JUROR: Hi.

5 MR. WEINREB: My name is Bill Weinreb. I'm one of the
6 prosecutors in the case. I think you've been pretty clear in
7 your answers, and so I don't want to just belabor it by asking
8 the same questions over and over. But maybe by asking slightly
9 different ones we can get a better sense of your assessment of
06:19 10 your own abilities in this area.

11 So a couple times you've said that you have kids and
12 that, if it were one of your children, maybe you could vote to
13 impose the death penalty. Forgive me if I'm wrong, but you
14 seem to get a little emotional even thinking about it.

15 THE JUROR: I do.

16 MR. WEINREB: You're emotional right now thinking
17 about it.

18 THE JUROR: Right.

19 MR. WEINREB: But when it comes time to make a
06:20 20 decision in this case, you will be asked to do it not based on
21 emotion but based on --

22 THE JUROR: The evidence.

23 MR. BRUCK: I object to that. I mean, you can't
24 banish emotion from this. I mean --

25 THE COURT: Well, get to the point of the question, I

1 think, will be the best thing.

2 MR. WEINREB: So far, I guess what you've said -- what
3 you seem to be saying -- you correct me if I'm wrong -- is
4 that, if your emotions were impacted as deeply as if it were
5 one of your own kids, then you think you could potentially do
6 it?

7 THE JUROR: No. What I meant to say was, if it were
8 one of my own kids, not if my emotions were like if it were one
9 of my own kids.

06:21 10 MR. WEINREB: Okay. So other than if it were one of
11 your own kids, can you imagine actually doing it, sentencing
12 someone to death?

13 THE JUROR: No. But that's why the conflict is
14 because I never would have imagined being able to do it, and
15 then I find myself thinking I could if it was one of my
16 children. So I don't know. I don't know if, after hearing
17 everything, I have -- you know, I change my mind. But I won't
18 know that, you know -- I can't say right now.

19 MR. WEINREB: I appreciate that, but, thank goodness,
06:21 20 you're not going to hear that it was one of your own kids. So
21 we know that we can rule out that possibility.

22 THE JUROR: Right, yeah. That was just to explain how
23 it changed a little bit from what I initially thought, that I
24 could never do that.

25 MR. WEINREB: Right. I understand. But that's a very

1 personal kind of impact. In this case, it's not going to be
2 personal.

3 THE JUROR: Right.

4 MR. WEINREB: It's going to be about other people.
5 And so, again --

6 MR. BRUCK: I think now we're staking out this
7 individual.

8 THE COURT: I think we're getting close. I agree.

9 MR. WEINREB: In imagining any case in which you're
06:22 10 sitting, not this case in particular but any case where it's
11 not personal, it's -- didn't affect your family, anyone who you
12 knew personally, can you imagine yourself actually -- despite
13 your moral objections to it and your feelings about it,
14 actually sentencing someone to death?

15 THE JUROR: I don't know. No matter how you ask that
16 question, I don't know if I can do that.

17 MR. WEINREB: Okay. I think that's a pretty
18 definitive answer. Thank you.

19 MR. BRUCK: Good afternoon.

06:22 20 THE JUROR: Hi.

21 MR. BRUCK: I'm David Bruck. I'm one of Jahar
22 Tsarnaev's lawyers. I just want to be sure that we're all on
23 the same page. I think, when the judge was asking you
24 questions before, the bottom line of all of his questions are,
25 can you put your opinions or publicity aside and base your

1 decision based on the evidence?

2 MR. WEINREB: Objection. I don't believe that's what
3 all the questions were about, including the --

4 THE COURT: Some of them were. You can have it. Go
5 ahead.

6 MR. BRUCK: That's what I really want to get to,
7 understanding that you have opinions about the death penalty.
8 A lot of people do. The real question is: Can you -- could
9 you base a decision on the death penalty based on the evidence
06:23 10 in the case? If the case was heinous enough, could you vote
11 for it? I'm not talking about this case. I just mean --

12 THE JUROR: I don't know the answer to that.

13 MR. BRUCK: You don't know the answer to that why?

14 THE JUROR: Because I have never considered whether or
15 not -- I just don't -- I'm conflicted, just conflicted about
16 whether or not I could sentence someone to death.

17 MR. BRUCK: Does that have anything to do with not
18 having heard the evidence yet?

19 THE JUROR: No.

06:24 20 MR. BRUCK: Thank you.

21 THE COURT: Okay. All right. Thank you.

22 THE JUROR: Am I done?

23 THE COURT: You're done. Just leave that there.

24 THE JUROR: Thank you.

25 THE CLERK: Juror No. 399.

1 MR. BRUCK: Before the juror comes in, I'd like to
2 move, in the future, that the counsel for the government not
3 make comments after the juror has finished with their
4 examination but immediately before ours about -- such as, I
5 think that's pretty definitive, or, I think you've been clear.
6 In a way, it's sort of trying to nail down the answers so that
7 it won't change or to keep it from being affected by the rest
8 of the voir dire. I don't think it's really fair.

9 THE COURT: Okay. I think we should avoid commenting
06:25 10 on the quality of the answers. Questioning is fine.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

06:25 20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
06:26 10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
06:28 20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 . . . END OF SIDEBAR CONFERENCE.)

1 THE CLERK: Juror No. 399.

2 THE JURY CLERK: Juror 399.

3 THE JUROR: Sir, over here, please. Have a seat right
4 here.

5 THE COURT: Good afternoon.

6 THE JUROR: Good afternoon, sir.

7 THE COURT: Since you were last here, have you been
8 able to avoid discussing the substance of the case with anyone?

9 THE JUROR: Certainly.

06:30 10 THE COURT: And to the extent possible, put aside any
11 media stories that you may have come across?

12 THE JUROR: No problem.

13 THE COURT: Thank you. That's the questionnaire that
14 you filled out when you were here last. We're going to ask you
15 a little bit about some of the answers, follow-up on some of
16 them, okay?

17 THE JUROR: Sure.

18 THE COURT: I'm looking at Question 26 on Page 10
19 where you tell us in brief what your employment is. You're a
06:30 20 manager of a home medical equipment company.

21 THE JUROR: That is correct.

22 THE COURT: Can you tell us a little bit about what
23 that works involves for you?

24 THE JUROR: We provide home medical equipment such as
25 wheelchairs, hospital beds, oxygen, to people in their homes,

1 up in the -- primarily in the Merrimack Valley area.

2 THE COURT: Is this a national company?

3 THE JUROR: No, no. It's a locally owned company.

4 They've been in business about 20 years. I just work there.

5 I'm not an owner.

6 THE COURT: And you've been there?

7 THE JUROR: Going on ten years.

8 THE COURT: You owned your own business before that?

9 THE JUROR: Yes, sir, I did own a business for a few
06:31 10 years in Philadelphia.

11 THE COURT: So you've been in Massachusetts since
12 about the time you went to work for the -- your current
13 employer, is that --

14 THE JUROR: That's correct, yes.

15 THE COURT: Mid --

16 THE JUROR: About ten years ago, yup. Years prior to
17 that, I lived here, then moved away, and then moved back.

18 THE COURT: So what does your work involve? What do
19 you do?

06:32 20 THE JUROR: Well, I'm what's called an ATP, assistive
21 technology professional. That is a certification that is
22 required by Medicare and the insurance companies to prescribe a
23 complex power wheelchair or other complex rehab equipment. So
24 most of my day is spent measuring butts.

25 THE COURT: That's direct enough, I guess.

1 THE JUROR: Well.

2 THE COURT: Let me ask you to go back to Page 5,
3 Question 10.

4 THE JUROR: Page 5?

5 THE COURT: Yeah. In that question we outlined the
6 general plan for the conduct of the trial of the case in terms
7 of weekly basis and included the projection that it may go
8 three or four months possibly. And we asked, recognizing that
9 there's some imposition on every juror who sits, whether this
06:33 10 would cause a substantial hardship to you, and you answered
11 "no." Is that accurate?

12 THE JUROR: It certainly is a hardship. I'm not sure
13 what you would consider substantial.

14 THE COURT: One thing is there's a possibility of
15 financial. Would you continue to get paid?

16 THE JUROR: I would certainly hope so, yes.

17 THE COURT: Have you talked about that with your boss?

18 THE JUROR: They would certainly prefer I not be
19 chosen to serve.

06:33 20 THE COURT: Right. But if you were, do you think they
21 -- are you salaried?

22 THE JUROR: Yes, I am, yes.

23 THE COURT: Do you think they would continue to pay
24 your salary?

25 THE JUROR: I do think so, yes.

1 THE COURT: In terms of the impact on you -- it might
2 impact their conduct of the business, but in terms of the
3 impact on you, it would not --

4 THE JUROR: I probably would be doing a little more
5 work nights and weekends and days off but --

6 THE COURT: You may have already said this, and I may
7 have missed it, but back at Question 26, we asked you to check
8 a box if you supervised others, and you did. How many people
9 do you supervise?

06:34 10 THE JUROR: Four.

11 THE COURT: Are they doing similar things to what you
12 do?

13 THE JUROR: Yes, yes, yes.

14 THE COURT: We asked about use of social media in
15 Questions 29 and 30. You answered 30 that you do Facebook
16 every few weeks, I think is what you said. That's on Page 11.

17 THE JUROR: Yes.

18 THE COURT: Tell us a little bit about how you use
19 Facebook.

06:34 20 THE JUROR: I'm not a fan of Facebook. I do, every
21 few weeks, go in to look at our company Facebook pages. And,
22 oddly enough, my grade school has a Facebook page that I do
23 check in on. But other than that, I'm a very infrequent user
24 of Facebook.

25 THE COURT: Do you post at all?

1 THE JUROR: I do to my private grade school group
2 sometimes, but that's about it.

3 THE COURT: Let me ask you about -- I'm on Page 15.
4 Actually, go back a page, to 14. You can take the clip off
5 there if it's easier to navigate. You don't have to keep it
6 clipped.

7 So beginning at Question 44, 45, and 46, we asked
8 whether you had strongly positive or negative views about
9 prosecutors, defense attorneys, and then on the top of the next
06:36 10 page, law enforcement officers. And you said "no" to the
11 prosecutors and defense attorneys; but with respect to law
12 enforcement officers, you said you had "negative views about
13 the job they do. It's gone to their heads."

14 THE JUROR: My personal opinion is, years ago when I
15 was a kid, the police officers had some -- typically some
16 different ideas than they do today. I think, along with the
17 television show Miami Vice, a lot of what -- a lot of them get
18 carried away with their attitudes of self-importance.

19 I think they have one of the safest jobs that a person
06:37 20 can have. Where else are you fully trained, fully armed, in
21 full communications for whatever comes up? Certainly, it's a
22 tragedy when one is injured or killed on duty. Absolutely,
23 it's a tragedy. But it's also a tragedy when a truck driver
24 trying to get our groceries to the store for us gets killed,
25 too.

1 So I just -- I just don't see them as elevated above
2 the rest of people. And I think sometimes, because of the
3 media and Hollywood, that it gets carried away a little bit.

4 THE COURT: Go back to Page 14 for a minute and,
5 actually, the question before the series that I asked you
6 about. And this is related to what you have just been saying.
7 Question 43 asked whether you or someone close to you had ever
8 been treated unfairly by a law enforcement officer and so on.
9 I'm just wondering if your view that their authority has gone
06:38 10 to their heads has led to a personal experience that you've had
11 or somebody close to you has had.

12 THE JUROR: My ex-wife was a police officer in
13 Philadelphia.

14 THE COURT: I'm not sure we can tease out the sources
15 of the difficulty.

16 Apart from her, have you had a personal experience
17 where you thought a law enforcement officer was treating you
18 unfairly?

19 THE JUROR: I haven't had a personal encounter with
06:38 20 any, no. Sometimes I hear it on TV. And like I said, I think
21 they certainly have a difficult job to do, and I appreciate the
22 job they do. I also appreciate the jobs a lot of other people
23 do.

24 THE COURT: So now let's go back to Page 12, and in
25 Question 36 we asked -- we noted that jurors will be instructed

1 that the testimony of law enforcement officers is to be treated
2 as the testimony of other witnesses, and it's not to have
3 either greater or lesser weight simply because of the witness'
4 status as a law enforcement officer. We asked if you had any
5 concerns about your ability to follow that instruction, and you
6 said "no." Is that correct?

7 THE JUROR: That's correct, yes, absolutely.

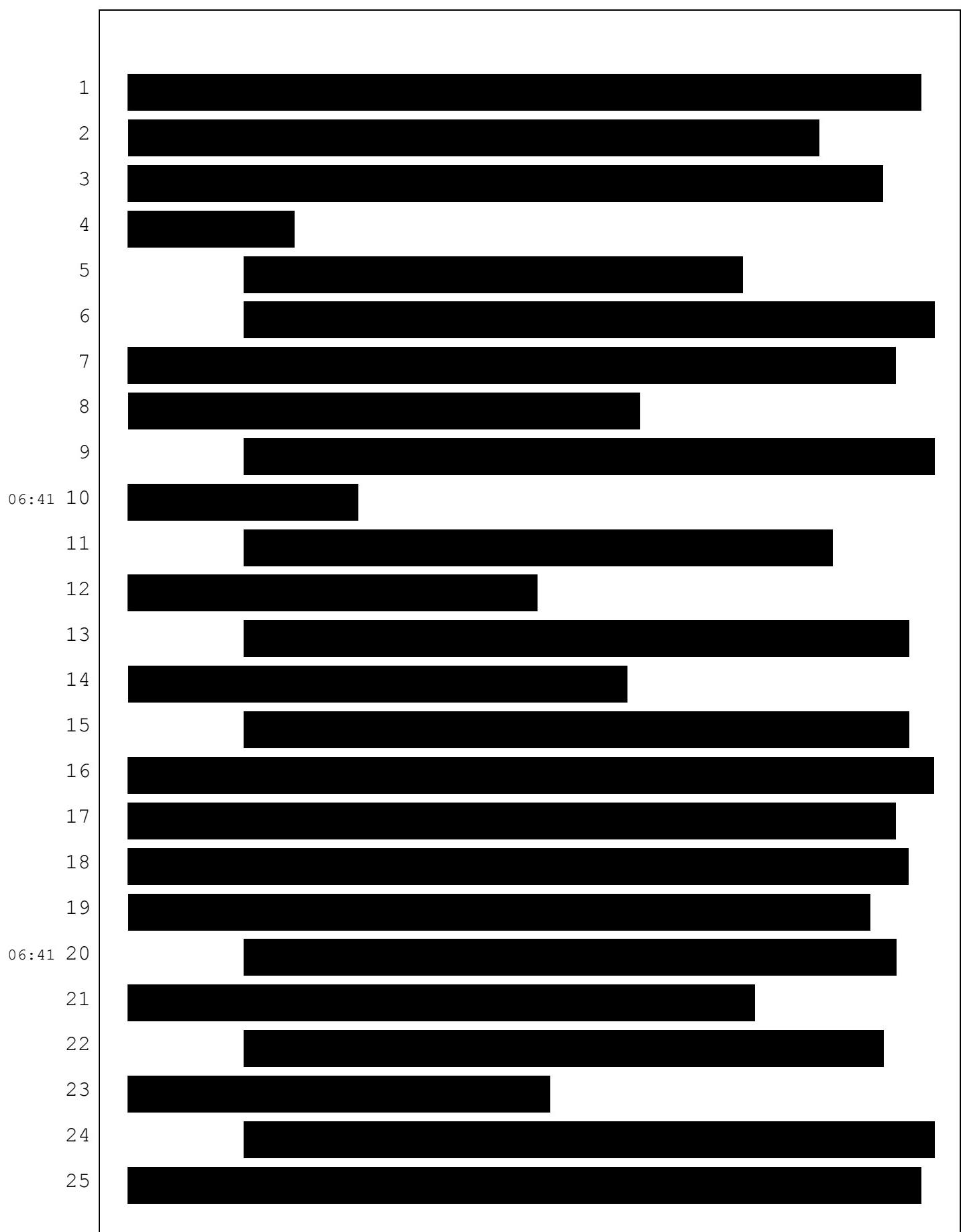
8 THE COURT: That's taking into account your views that
9 you expressed in Question 46?

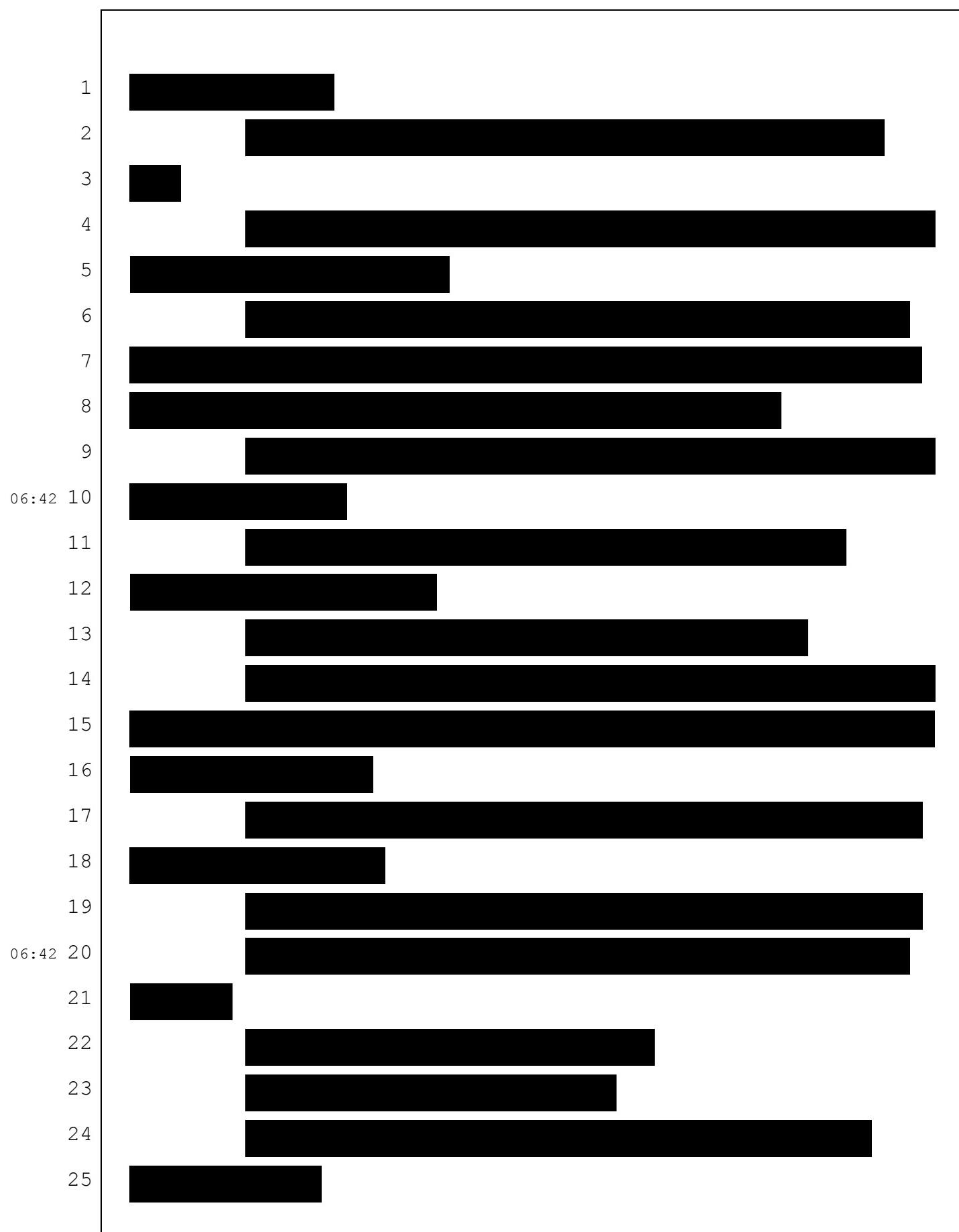
06:39 10 THE JUROR: I think Question 46 actually supports my
11 answer on Page 36 because I don't elevate -- see them as having
12 super status. I see them as having the same status anybody
13 else would.

14 THE COURT: Could we do a brief sidebar, please?

15 (SIDEBAR CONFERENCE AS FOLLOWS:

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
06:40 20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]





1 THE JUROR: Thank you for doing that.

2 . . . END OF SIDEBAR CONFERENCE.)

3 THE COURT: Let me ask you to look at Page 20 of the
4 form, Question 77, near the top. It's a multiple part
5 question. And we asked you there whether, as a result of
6 things you've seen or heard in the media or from other sources,
7 you had formed certain opinions, including the opinion that
8 this defendant is guilty or not guilty or that he should
9 receive the death penalty or not receive the death penalty.

06:43 10 And you had some boxes. You could check "yes," "no" or
11 "unsure." And as to each of those answers you checked
12 "unsure." Could you tell us what your reasoning was in
13 selecting "unsure"?

14 THE JUROR: I know that bad things happen in the
15 world. I also know that -- I've come to realize in my life
16 that what I give my attention to is my choice. And I -- I
17 choose very carefully what I look at and what I let into my
18 life personally. And I choose not to listen to the news, for
19 example. I know there's stuff out there that goes on, but you
06:44 20 know what? It doesn't need my attention. And to be -- at the
21 risk of sounding totally selfish, if it doesn't involve me -- I
22 won't say I don't care, but I don't need to be involved.

23 So as far as whether or not -- the answer to any of
24 these questions is really "unsure" is not correct. "I haven't
25 thought about it" would be more correct. I just haven't given

1 it any thought. It's none of my business. I heard things
2 happened. I think things happen all the time, but I don't pay
3 much attention. Honestly, the only time I turn on the news is
4 to check the weather over the last few weeks. But other than
5 that -- yeah, stuff goes on, but I don't need to know about it.
6 I really don't. And so I don't have -- I would choose not to
7 have an opinion about this. It's really none of my business.

8 Now, if for some reason I was on a jury or something,
9 then it would be my business, and I would have to form an
06:45 10 opinion. But I'll be perfectly honest with you. I don't want
11 to say I don't care because it's not that I'm not a caring
12 person, but this doesn't affect me, so I have no -- I have no
13 business. I don't know.

14 THE COURT: As you say, if you were a juror on this
15 case, then you would be involved, and you would have to pay
16 attention to it. So let me just ask you a few things about
17 that. I'm sure you realize that in a criminal prosecution if a
18 person is accused of a crime, the person is presumed innocent,
19 or not guilty, unless the government proves that he's guilty by
06:46 20 the evidence at trial and proves it beyond a reasonable doubt.

21 THE JUROR: Certainly, absolutely.

22 THE COURT: Do you have any difficulty in faithfully
23 applying those principles if you were a juror in this case?

24 THE JUROR: None whatsoever.

25 THE COURT: And if, for example, in listening to the

1 evidence on any particular charge, you concluded that the
2 government had failed to satisfy its burden of proving the
3 defendant guilty beyond a reasonable doubt, would you be able
4 to vote to find him not guilty of that charge?

5 THE JUROR: Absolutely, if I -- I would have to look
6 at the facts and weigh the case. It's either this or that.
7 Yes, absolutely.

8 THE COURT: Let me ask you to go to Page 23. Question
9 88 and the following questions ask about your views, if any,
06:47 10 about the death penalty, both in general and perhaps in
11 relation to the circumstances here. Question 88 is the general
12 question. If you have any views on the death penalty in
13 general, what are they? And you wrote, "I'm not sure I support
14 the death penalty."

15 THE JUROR: I have no views on the death penalty for
16 the same reason I have no opinion on the gentleman's guilt or
17 not guilty. I've never been confronted with it. I've never
18 been in a position to have to make that decision. Frankly, I
19 would hope that I never am in the position to have to make that
06:47 20 decision or weigh in on it. But if I did have to make the
21 decision, I would hope that I would be able to defer to the law
22 for my decision because I can't say what I would -- what my
23 opinion would be. I don't know. I really don't know.

24 It's easy for someone to sit around the house and go,
25 I'd do that and I'd do that. Until you're really faced with

1 it, I don't think -- I don't know what my answer -- I haven't
2 seen the evidence. I don't know.

3 THE COURT: In the next question, we asked if you
4 could locate yourself on a sliding scale from 1 to 10, where 1
5 was strongly opposed because you believe the death penalty
6 should never be imposed; and 10, in the opposite pole, you
7 think it should be imposed whenever a defendant is convicted of
8 intentional murder. You placed yourself at a 5 between
9 those --

06:48 10 THE JUROR: Because I don't know. I honestly don't
11 know. We can cite another case somewhere where a person got
12 the death penalty; and, frankly, I didn't hear the evidence.
13 And so I would have to say that whatever those people decided
14 that was the best decision because I wasn't there. I mean, I'm
15 speaking about myself. I can't -- I'm not second-guessing
16 anybody on the death penalty issue.

17 THE COURT: So let's look at the next question, No.
18 90, on Page 24. There we asked, if you could find from the
19 selections offered, whether there was a statement that best
06:49 20 described your feelings about the death penalty in a case
21 involving someone guilty of murder. And you chose (d), which
22 is, "I am not for or against the death penalty. I could vote
23 to impose it or I could vote to impose a sentence of life
24 imprisonment without the possibility of release, whichever I
25 believe was called for by the facts and the law in the case."

1 Is that a fair --

2 THE JUROR: I think that's a accurate statement, yes,
3 sir.

4 THE COURT: You heard me this morning talk a little
5 bit about what the penalty phase would be like if the defendant
6 was convicted for a crime that qualified for the death penalty.
7 You would hear predictably some evidence of what the government
8 would claim are aggravating factors that made this a more
9 blameworthy murder than other murders. You would hear
06:50 10 mitigating factors about the crime or about the defendant that
11 the defense would argue should lead you to think that the death
12 penalty is not the right punishment, that life imprisonment is.
13 Would you be able to listen to all that evidence, weigh it,
14 consider it, and then decide which of the two alternatives you
15 would be prepared to support?

16 THE JUROR: I think it would be my obligation to do
17 so.

18 THE COURT: I'm asking: Could you be able to do it?

19 THE JUROR: Yes, yes.

06:50 20 THE COURT: And if you look at the bottom of Page 25,
21 Question 95, now getting more particular to this case, If you
22 found this defendant guilty and you decided -- this is after
23 the penalty phase -- and you decided that the death penalty was
24 the appropriate punishment for him, could you conscientiously
25 vote for the death penalty? And you checked the box, "I'm not

1 sure."

2 THE JUROR: Well, I think what I really meant here is
3 I wasn't that sure about -- the question seems a little
4 ambiguous to me, your Honor. It says, if I decided the death
5 penalty was the appropriate punishment, could I conscientiously
6 vote for it? Well, if I decided the death penalty is the
7 appropriate punishment, then, obviously, I would vote for it.

8 THE COURT: Well, I'm not sure --

9 THE JUROR: I'm not sure --

06:51 10 THE COURT: That's your interpretation, and that's a
11 reasonable interpretation of the question. And you're right.
12 It is a little ambiguous. I think one of the things the
13 question was getting at was: If you intellectually decided
14 that this is the case where the death penalty would be
15 appropriate, could you yourself actually vote to impose that?
16 In other words, could you act on your intellectual judgment, or
17 would you be inhibited by your personal feelings or moral
18 objections or anything of that sort?

19 THE JUROR: I don't feel I have a particular moral
06:51 20 objection to it, no. I think if --

21 THE COURT: If you thought that was the right penalty,
22 could you vote to impose it knowing that somebody would be put
23 to death?

24 THE JUROR: If that's what I felt was the appropriate
25 punishment, again, I would feel obligated to do that, to vote

1 for that.

2 THE COURT: We ask the other side of that question on
3 the next page, at the top; that is, if you found this defendant
4 guilty and you decided that life imprisonment without the
5 possibility of release was the appropriate punishment for him,
6 could you conscientiously vote for that punishment? And you
7 said "yes."

8 THE JUROR: I think it would be an easier call to vote
9 for the life imprisonment than the death penalty, yes. So
06:52 10 that's why I answered "yes" as opposed to "unsure" on the --

11 THE COURT: Easier in what sense?

12 THE JUROR: The death penalty is a pretty final
13 decision. Life imprisonment is not quite so final.

14 THE COURT: Follow-up?

15 MR. WEINREB: No, sir.

16 MR. BRUCK: Not from us either. Thank you. You've
17 answered our questions.

18 THE COURT: Thank you, sir.

19 THE CLERK: Juror No. 400.

06:53 20 THE JURY CLERK: Juror No. 400.

21 THE CLERK: Sir, over here, please. Have a seat,
22 please.

23 THE COURT: Good afternoon.

24 THE JUROR: Good afternoon.

25 THE COURT: Thanks for your patience.

1 THE JUROR: Yeah. No problem.

2 THE COURT: Have you been able to avoid discussing any
3 of the substance of the case with people since you were last
4 here?

5 THE JUROR: Yes.

6 THE COURT: And, as much as possible, avoiding news
7 accounts touching on the subject?

8 THE JUROR: Yeah, definitely.

9 THE COURT: We just want to follow up on some of the
06:54 10 answers you gave us in the questionnaire. Let's start with
11 your job. What do you do?

12 THE JUROR: I work in, like, tech support, application
13 support, for computers.

14 THE COURT: In what kind of a company?

15 THE JUROR: It's a company based out of the U.K. It's
16 financial software.

17 THE COURT: So what do you do on a daily or weekly
18 basis?

19 THE JUROR: On a daily basis, I come in. I generally
06:54 20 work on projects. I set up software on customer servers
21 usually in different countries.

22 THE COURT: Remotely?

23 THE JUROR: Remotely, yes. And also take in any
24 support calls and stuff like that. I handle that too and then
25 also handle the IT in the entire office.

1 THE COURT: How big is the work force where you are?

2 THE JUROR: Well, the Massachusetts office is nine
3 people. The -- we're in the U.K., Australia. The U.K. is the
4 biggest office. It has about 110 people.

5 THE COURT: We asked earlier in the questionnaire --
6 this is on Page 5, Question 10, if you want to look. We
7 outlined what we thought the course of the case would be, and
8 that included the prediction that it might last for three or
9 four months. We asked if it would be an unusual hardship for
06:55 10 you to serve on the case, and you said "no." Is that accurate?

11 THE JUROR: It is. I don't -- I mean, the only
12 hardship would be me getting here every day. I don't have --

13 THE COURT: But in terms of your employment, you'd
14 still get paid?

15 THE JUROR: Yeah, as long as I'd still get paid, that
16 would be -- I'm pretty sure, yeah.

17 THE COURT: We asked about social media. You say you
18 look at Facebook once a week or so.

19 THE JUROR: Maybe, maybe not even that much. I'm not
06:55 20 big into that.

21 THE COURT: For social things?

22 THE JUROR: That's it, actually. I don't really do
23 any social media stuff, Twitter or anything like that.

24 THE COURT: No. I mean, the use of Facebook is for
25 family and friends?

1 THE JUROR: Yeah.

2 THE COURT: It's not business related at all?

3 THE JUROR: No, not at all.

4 THE COURT: We asked a little bit about people you
5 knew who were perhaps involved in law enforcement and other
6 particular lines of work. This is on Page 12, Question 34.
7 You say you have a friend who is or was a Mass. state trooper.

8 THE JUROR: He is a Mass. state trooper, yeah.

9 THE COURT: You're not sure how long he's done that?

06:56 10 THE JUROR: Maybe ten years, around there.

11 THE COURT: Give us an idea of how close a friend he
12 is.

13 THE JUROR: I grew up with him, high school, knew him
14 in college. Still good friends with him now, but he lives
15 farther away. He lives on the south side of Boston. I live on
16 the north.

17 THE COURT: How often do you catch up with him?

18 THE JUROR: Maybe every three or four months. I talk
19 to him maybe a couple times a month but see him, like, once
06:56 20 every three or four months.

21 THE COURT: Would that have any effect on your
22 impartiality as a juror in a criminal prosecution?

23 THE JUROR: No.

24 THE COURT: Do you know if he has any particular
25 assignment or area of --

1 THE JUROR: What he does?

2 THE COURT: Yeah.

3 THE JUROR: He's a detective. I think he's in
4 insurance fraud.

5 THE COURT: Could we do a brief sidebar?

6 (SIDEBAR CONFERENCE AS FOLLOWS:

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

06:57 10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

06:58 20 [REDACTED]

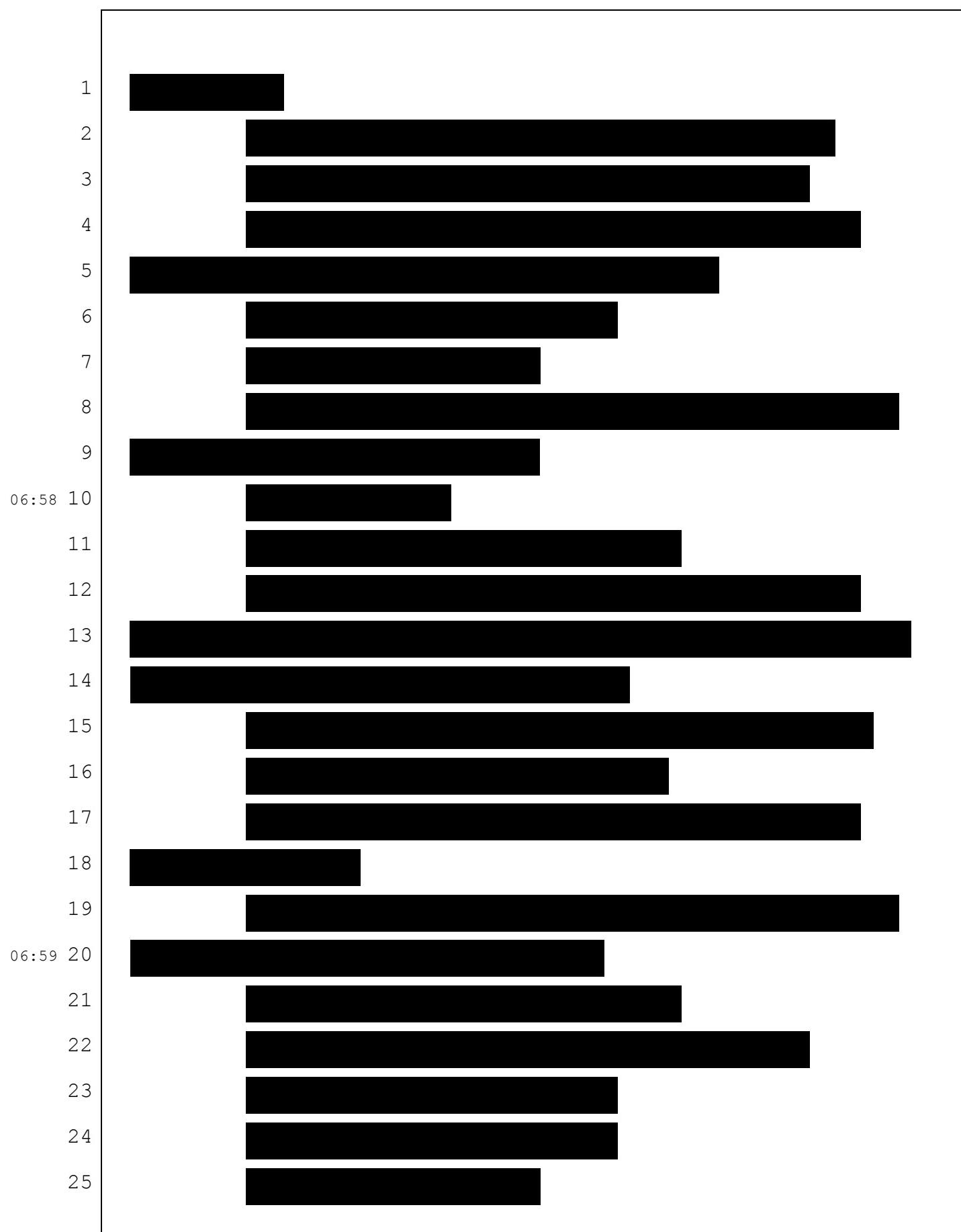
21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]



1 THE COURT: Okay. We'll go off sidebar mode.

2 . . . END OF SIDEBAR CONFERENCE.)

3 THE COURT: If you go to Page 20, in Question 77,
4 which is near the top of the page, we asked whether, on the
5 basis of things you'd seen or read in the media or from other
6 sources, you formed various opinions, that the defendant was
7 guilty, that he was not guilty, that he should receive the
8 death penalty, that he should not receive the death penalty.
9 We had it set out that there would be a response after each of
07:00 10 the subsections (a), (b), (c), and (d). It may be, as I look
11 at this, you thought maybe the bottom was answering all of
12 them.

13 THE JUROR: Yeah.

14 THE COURT: You checked "unsure" as to those matters.
15 Can you tell us what you were thinking as you did that?

16 THE JUROR: Well, at the time, when I actually read
17 that, I was thinking more -- I was unsure because I would need
18 to see the facts in general. I don't know what really happened
19 so --

07:00 20 THE COURT: You've seen some media coverage of the
21 events?

22 THE JUROR: Right, obviously, yeah.

23 THE COURT: Who hasn't, I guess?

24 THE JUROR: Right, exactly.

25 THE COURT: But that hasn't led you to form any

1 conclusions?

2 THE JUROR: No, no.

3 THE COURT: I'm sure you realize that in a criminal
4 prosecution a person is presumed not guilty, or innocent,
5 unless the government proves him guilty by the evidence at
6 trial and proves that beyond a reasonable doubt. You're
7 familiar with those principles?

8 THE JUROR: Yes.

9 THE COURT: Do you have any reservations about your
07:01 10 ability to faithfully apply those principles if you were a
11 juror in this case?

12 THE JUROR: Not at all.

13 THE COURT: On any particular charge you thought the
14 government had fallen short and not had enough evidence to
15 convince you beyond a reasonable doubt that the defendant was
16 guilty of that charge, would you be able to vote not guilty for
17 him on that charge?

18 THE JUROR: Yes.

19 THE COURT: We asked about your views about the death
07:01 20 penalty in a series of questions beginning on Page 23, at
21 Question 88. And that was a general question. If you have any
22 views about the death penalty in general, what are they? You
23 said, "I don't have any issues," I guess is --

24 THE JUROR: I don't have any issues with it.

25 THE COURT: Could you amplify that a little?

1 THE JUROR: Sure. If the person is found guilty and I
2 believe they deserve the death penalty and they're up for the
3 death penalty, I could sentence them to death, saying so. If
4 there wasn't enough evidence, I basically could look -- I would
5 say definitely not. I would have to be swayed one way or the
6 other. In other words, I don't have any issues choosing one
7 way or the other. Put it that way.

8 THE COURT: Okay. In the next question, we asked if
9 you could place yourself on a scale of 1 to 10, with 1 being
07:02 10 strongly opposed because you believe the death penalty should
11 never be imposed, 10 being strongly in favor because you had
12 the belief that a death penalty should be imposed whenever the
13 defendant has been convicted of intentional murder. You
14 selected 7.

15 THE JUROR: Yes.

16 THE COURT: Can you give us your thinking there?

17 THE JUROR: Sure. That's fine. I'm trying to think
18 of my frame of mind when I said that. But 10, obviously, if
19 you're strongly in favor, you're going to give -- you're going
07:02 20 to look for the death penalty every time basically. I'm not
21 looking for it every time, but I think it should be used when
22 it's necessary versus not being used at all. Put it that way.

23 THE COURT: Okay. Go to the next page. We came at
24 this in a slightly different direction this time, in Question
25 90, by asking if there was a statement among the ones that were

1 offered that best described your feelings about the death
2 penalty when someone has been proved guilty of murder. And you
3 selected (c), which is, I'm opposed to the death penalty but
4 vote to impose it if I believe the facts and the law in the
5 particular case called for it.

6 THE JUROR: That doesn't make sense to me because I'm
7 not --

8 THE COURT: I was going to say that's a little
9 inconsistent about what you said. Take a minute to read
07:03 10 through all the options to see if there's a better expression
11 of your views.

12 THE JUROR: (e).

13 THE COURT: (e), which is you're in favor of the death
14 penalty but could vote for a sentence of life imprisonment
15 without the possibility of release if you believed that
16 sentence was called for by the facts and the law in the case.

17 THE JUROR: Yeah.

18 THE COURT: You heard me this morning tell you as a
19 group that -- what the features of a penalty phase would be.

07:04 20 THE JUROR: Yes.

21 THE COURT: And, of course, you realize that you don't
22 get to the penalty phase unless the jury has already convicted
23 the person of willful murder.

24 THE JUROR: Right.

25 THE COURT: And that there would be a presentation of

1 what the government would characterize as aggravating factors
2 that would tend to support a conclusion perhaps that the death
3 penalty was appropriate. The defense would present evidence
4 concerning mitigating factors or circumstances that would
5 perhaps militate against the death penalty and in favor of life
6 imprisonment as an appropriate punishment. Then the jurors
7 would think about all that and make their own individual
8 decision about which they thought was the appropriate penalty.

9 THE JUROR: Okay.

07:05 10 THE COURT: Would you be able to do that and be open
11 to either death penalty or life imprisonment depending on how
12 you assessed all those factors?

13 THE JUROR: Yes.

14 THE COURT: If you'd look at the bottom of Page 25,
15 Question 95, in this we asked, If you found this defendant
16 guilty and you decided that the death penalty was the
17 appropriate punishment for him, could you conscientiously vote
18 to impose the death penalty? You said "yes." Is that
19 accurate?

07:05 20 THE JUROR: Yes.

21 THE COURT: Next question on the top of the next page
22 is a similar but different question; that is, If you found this
23 defendant guilty and you decided that life imprisonment without
24 the possibility of release was the appropriate punishment for
25 him, could you conscientiously vote for life imprisonment

1 without the possibility of release?

2 THE JUROR: Yes.

3 THE COURT: That, again, represents your view?

4 THE JUROR: It does.

5 MR. WEINREB: I have no questions. Thank you.

6 MS. CONRAD: Good afternoon. I'm sorry. One moment.

7 (Discussion held off the record.)

8 MS. CONRAD: Thank you very much. We don't have any
9 questions.

07:06 10 THE COURT: Thank you. Just leave that there.

11 MR. CHAKRAVARTY: Your Honor, on the last juror, I'm
12 not going to go into it. It may make sense, before we go and
13 retire, recess for the discussion, to have a sidebar with
14 regard to what the parties' perception is of that.

15 MS. CLARKE: I think we can probably talk about it and
16 come back and advise the Court. I think we don't have an
17 objection to the --

18 MR. CHAKRAVARTY: Right. At least we should be
19 prepared to argue the merits.

07:07 20 MS. CLARKE: No.

21 THE COURT: We'll follow the usual course.

22 MR. CHAKRAVARTY: Fair enough.

23 THE COURT: So about 4:00.

24 (Recess taken at 3:38 p.m.)

25 (The Court entered the courtroom at 4:08 p.m.)

1 (SIDEBAR CONFERENCE AS FOLLOWS:

2 THE COURT: I think the first three, I guess, we
3 suspended on early. That's 366, 369, and 370. So the first
4 one for discussion, if there is any, is 375.

5 MS. CONRAD: That would be a defense motion, your
6 Honor.

7 Your Honor, first of all -- well, the main point here
8 is that he did not put down, in response to Question, I think,
9 80, 81, 82, that anyone was affected but he expressed -- I
07:39 10 think he wrote something like he wasn't sure what the question
11 meant. And he clearly interpreted that as whether anybody was
12 physically injured.

13 However, he then volunteered that he knew a lot of
14 people who worked in the area and a lot of people who were
15 affected. And he said, Everyone in Boston was affected.
16 Everyone in the country was affected. And I tried to follow up
17 on that, and I was not permitted to. And I think that that is
18 a crucial comment because it's not a question of an empirical
19 fact, simply an empirical fact, of whether someone was
07:39 20 affected. It is the juror's subjective view of the impact of
21 these events on this person. Just as Juror 385 said, you know,
22 although she didn't know anyone who was there, but her husband
23 had run the Marathon before. She could have been there. So
24 the idea of it personally affected her. And the problem here
25 is we don't know how he feels about these events except that he

1 feels that all of Boston and potentially all of the country was
2 affected.

3 To the extent, as we've said in previous settings and
4 previous pleadings, that this is an event, a crime, that has
5 been perceived as an attack on Boston, it seems to me this is
6 an indication that this juror believes it was an attack on
7 Boston, an attack on his community, an attack on him. And
8 that's what we don't know, what was behind those comments. And
9 taking his comments at face value, I think, given the lack of
07:41 10 follow-up that was permitted, I think that he should be
11 disqualified.

12 I also would note that, with respect to Question 77,
13 he said that, as far as being able to put aside his views on
14 guilt, he said, Well, really, if there was an option for
15 "unsure," I would have selected "unsure." When I tried to
16 follow up on that, again, I was cut off. And he sort of
17 reverted back to, having been asked questions by your Honor and
18 I think the government, although I can't remember, Oh, yes, of
19 course, I would presume him innocent.

07:41 20 But I think the fact that his first reaction, using
21 his own words, was, Well, I'm unsure if I could put my opinion
22 aside. And his own reaction, in his own words, was, A lot of
23 people I know were affected. Boston was affected. I think
24 that that is someone who is not impartial.

25 MR. WEINREB: Your Honor, the government opposes the

1 motion. Unlike the other juror who talked about her husband
2 having run the Marathon twice, this juror gave no indication
3 whatsoever, through his emotions, body language, and really not
4 through his literal answers, that he believed he personally had
5 been affected in a way that would interfere with his ability to
6 be fair and impartial.

7 I interpreted his saying, talking about this whole
8 city of Boston, indeed the whole country, was affected that he
9 personally had been no more affected than anybody had been --

07:42 10 MS. CONRAD: But -- go ahead.

11 MR. WEINREB: -- in Boston and in the country.

12 In any event, the question is always not whether a
13 particular thing happened. It's whether it would interfere
14 with the juror's ability to judge the case on the evidence, to
15 judge it fairly. And he gave every indication that he would be
16 able to and that none of these other -- these things that he
17 didn't even consider to be strong enough impacts to warrant
18 listing in the answer to the question on the questionnaire
19 would interfere.

07:43 20 MS. CONRAD: May I just respond to that briefly? Mr.
21 Weinreb, having objected successfully to those follow-up
22 questions, now says, Well, he didn't say how it emotionally
23 affected him because he wasn't asked. So we're inferring from
24 the lack of an answer, not for lack of trying to ask the
25 question, that there's nothing there. And that's what we can't

1 do.

2 THE COURT: Well, I'll deny the motion. On that
3 topic, it seemed to me that his answer, on its face, was a --
4 he was using the word "affected" in the broadest possible way
5 and not in the way that would affect his judgment in the case
6 in the sense that everybody is aware of it and has some idea.

7 So --

8 MS. CONRAD: But --

9 THE COURT: It in a sense devalued the word so it
07:44 10 didn't particularly mean what we were trying to get at, which
11 is a much more closer personal connection. And that's
12 influenced, I think, by his persona. He's obviously a pretty
13 confident fellow. He seems very bright. If he were affected
14 in a substantial way, it would have showed differently from the
15 way he appeared in answering the questions, and I just don't
16 think that's right.

17 I think his answers were satisfactory. As I say, he
18 appears as an intelligent, thoughtful person, who's cognisant
19 of his abilities to do what he's asked to do. And I think he's
07:44 20 fine.

21 MS. CONRAD: The only one thing I just want to add,
22 because it may impact future questioning, is it seems to me, if
23 that was going to be the response, Well, I was no more affected
24 than anyone else, then that would have been his response. And
25 I don't know why we aren't willing to let him say that in

1 response to the question.

2 THE COURT: Well, jurors don't always give the best
3 response they could. We judge them on what they've said.
4 Anyway, my assessment is that he's a qualified juror.

5 Next is 376.

6 MS. CLARKE: No motion.

7 MR. WEINREB: No motion.

8 THE COURT: 379, I think, was terminated early, as was
9 385.

07:45 10 386, I don't remember whether there was anything on
11 that or not.

12 MR. WEINREB: Well, the government moves to strike
13 386.

14 THE COURT: Go ahead.

15 MR. BRUCK: There will be no argument from the
16 defense.

17 THE COURT: Okay.

18 MR. BRUCK: 390 is a motion from the defense.

19 THE COURT: Okay.

07:45 20 MR. BRUCK: And I'm not sure. Does the government
21 oppose?

22 MR. WEINREB: We do.

23 THE COURT: Let's hear the motion then.

24 MR. BRUCK: As your Honor will recall, this is the
25 young woman who now works at Mass. General, who initially put

1 herself down as a 10 on her death penalty views, expressed the
2 view that she would always impose the death penalty for anyone
3 convicted of an intentional murder. She also put herself down
4 as a (d).

5 But her own words -- I mean, in the end, I asked
6 clarifying questions, and she went right back to saying that,
7 if the person was convicted beyond a reasonable doubt, if he
8 was guilty beyond a reasonable doubt, she would always impose
9 the death penalty. And there was no longer any ambiguity. In
07:46 10 fact, the original answer she gave was the last answer she gave
11 despite some valiant efforts to rehabilitate by the government.

12 In addition, this is a juror with -- who describes --
13 describing to her very young son, who is now seven, what had
14 happened and his confusion. She has a sister who has been
15 eight years in the Marines, served in Afghanistan. She now
16 works at Mass. General, which, of course, is one of the centers
17 for treatment, although she was not there at the time. There
18 were a lot of issues with this juror, but I don't think there's
19 any doubt that she is a *Morgan* juror. If there is -- at a
07:47 20 minimum, she is substantially impaired.

21 To the extent that there was what appeared to be
22 vacillation, it all makes sense when one interprets, as I think
23 we must, her answers as saying that it would depend on the
24 evidence of guilt, how certain she was of guilt, whether or not
25 she would always support the death penalty or not. But if

1 there was no issue of guilt, she never -- once that was clearly
2 established, she could listen to the evidence in the penalty
3 phase; but in the end, if there was no issue of guilt, she
4 would never -- she would always impose the death penalty. This
5 is a *Morgan*-impaired juror, and we think she should be
6 excluded.

7 MR. WEINREB: So I didn't interpret her answers that
8 way. She -- just as the Supreme Court has said, that there are
9 jurors who can be morally opposed to the death penalty but can
07:48 10 still decide cases on a case-by-case basis and impose it where
11 it is appropriate, this juror struck me as someone who was sort
12 of the mirror image of that, someone who believes very strongly
13 that there should be a death penalty and that it is appropriate
14 in cases but not necessarily in every case.

15 If you look at all of her answers on the
16 questionnaire, it's true that she put a 10 for 89. And
17 although Mr. Bruck correctly reads the literal language of the
18 question, I think our experience has uniformly been, in
19 questioning these jurors, that they just see this as being do
07:48 20 you oppose or favor the death penalty as a general matter
21 without paying attention to the specifics and the two-phase
22 nature of a capital case.

23 So she strongly is in favor of having a death penalty.
24 But every time she was asked whether she could vote to impose
25 it or a life sentence in the alternative, she said she could do

1 both. When it came to 90, she answered (d). When it came to
2 Question 96 and she was asked -- and here I'll quote the
3 literal language -- "If you found him guilty and you decided
4 life imprisonment without the possibility of release was the
5 appropriate punishment, could you conscientiously vote for it?"
6 She said "yes." She didn't even say unsure.

7 I think that she actually was pretty consistent
8 throughout her answers here, that she had very strong feelings
9 about the death penalty, no question about it, and she is
07:49 10 strongly in favor of it. But I don't think that Mr. Bruck's
11 final question, which was the attempt to sort of get her to say
12 that she would automatically impose it was a fair question
13 because that question used her own language of feelings, and it
14 focused on the question of whether -- he, in fact, said to her,
15 What we're after here is your feeling, what your feelings would
16 be. And that's not the relevant question. The question is
17 whether, despite her feelings, that it's an appropriate and
18 important punishment, that she could decide, go either way.
19 And, in addition, when Mr. Bruck asked that question, he didn't
07:50 20 mention the possibility of mitigating evidence or mitigating
21 factors.

22 So I think every time that the process was explained
23 to her, how the system -- how the system works and what her
24 duties would be, she was -- she said that she could impose a
25 sentence of -- meaningfully consider mitigation and impose a

1 sentence of life imprisonment.

2 MR. BRUCK: Do you need to hear anything further?

3 Her actual words in response to the Court, when you
4 asked her about 10, about her response circling 10, she said,
5 If he is guilty, I would be imposing the death penalty. And
6 beyond that, any contrary answer she gave always had the
7 ambiguity of where you're talking about guilt.

8 The other thing that I forgot to mention about her
9 son, Mr. Weinreb sort of preemptively, knowing we would ask
07:51 10 about it, asked her about the effect of having a son we all
11 know is almost the same age as Martin Richard, and her response
12 was -- there was a long pause, and then she said that that
13 might make it difficult. Of course, you asked follow-up
14 questions and she said, you know, she could put that aside or
15 whatever she said. But that was the raw, unvarnished truth.
16 And it's very understandable.

17 This juror has too much on her. There is way too
18 much, at best, ambiguity. If you look at the actual words she
19 used, both in response to the Court and in response at the end,
07:51 20 after everything had been laid out for her, we cannot say that
21 she would ever impose life imprisonment if she found beyond a
22 reasonable doubt that this young man was guilty.

23 THE COURT: I was going to ask you to comment on that.
24 That's the child.

25 MR. WEINREB: Yes.

1 THE COURT: She's apparently the single mother of a
2 boy about Martin Richard's age.

3 MR. WEINREB: Yes. So, again, I think that her
4 response to that was to give it some real thought. It seemed
5 to me that she hadn't given it some real thought up to that
6 point, and so she really did focus hard on it. I think, in
7 saying that it would be difficult, that that was a tribute to
8 her desire to think -- to be honest about it. And when she
9 said -- her initial reaction was it would be hard. When she
07:52 10 was asked again just how hard would it be, would it really
11 interfere? She thought about it some more, and she said no.

12 Many of the people we're seeing have teenagers -- who
13 have children who are teenagers, the same age as the defendant,
14 and yet we're not taking it as a ground to strike people that
15 they might have, you know -- it would be like sentencing to
16 death someone who could have been their own son having
17 committed the crime. I don't think that is a disqualifying
18 factor in and of itself unless the juror really indicates that
19 it's not something that they could set aside. And this one
07:53 20 seemed to, after giving it some thought, that she could.

21 And, frankly, I think that her hesitation is also
22 further confirmation that she doesn't believe the death penalty
23 is the automatic sentence in every case, or it wouldn't have
24 been a problem to answer that question. She would have just
25 said, of course, he should get the death penalty. That was

1 never her answer to any of these questions. In fact, the only
2 time it was ever the answer was at the end when Mr. Bruck led
3 her into saying it, and it was very inconsistent with
4 everything that had gone before.

5 THE COURT: Okay. I don't think I'm going to excuse
6 her. I think that -- I was impressed by her persona, I guess.
7 She seemed very composed, thoughtful, intelligent. I did think
8 she was -- had some perhaps inadequate understanding of the
9 processes. For example, I don't remember if it was with her or
07:54 10 with one of the other jurors, but it happened perhaps in both
11 cases anyway, that when the juror was talking about guilt, I
12 took the meaning to be culpability in the context rather than
13 the way we would use it as a first-stage proposition. And I
14 think, understood that way, it does refer to the penalty phase
15 and not to the guilt or innocence phase. In other words, it's
16 a way of actually, you know, processing perhaps the instruction
17 about particularly blameworthy case if you talk about how -- in
18 other words, we think of guilt as binary. There will be a
19 verdict that says he's guilty, or there will be a verdict that
07:55 20 says he's not guilty. Jurors may think of it as a continuum.
21 Some people are more guilty than others. That's a different
22 way of using the word. I think it's not surprising that
23 laypeople use the word that way.

24 It seemed to me throughout she was not necessarily
25 fully understanding the difference between the guilt and the

1 penalty phase and was getting confused about which phase she
2 was being asked about perhaps for the reason I just mentioned,
3 that people using the word "guilt," she may have been
4 translating that in her head.

5 I think, in not excusing her, I really rely on my
6 overall impression of her rather than on any specific answers.
7 She did say things on both sides of the question. There's no
8 question about that. She said them flatly sometimes. I don't
9 know that -- first of all, we're assessing her as a whole and
07:56 10 not on any given answer or series of answers. And I have to
11 say that my judgment about her is that she can be prepared to
12 hear the evidence in a penalty phase and potentially go both
13 ways.

14 MR. BRUCK: So the record is complete, I also probably
15 should have mentioned again, although I don't know that I
16 needed to, but she also said she sheltered in place with her
17 young child as a consequence --

18 THE COURT: That wouldn't alter my --

19 MR. BRUCK: And we would add that.

07:56 20 THE COURT: Fair enough. I would pass her at this
21 point.

22 Let me just add, I don't think there's anything in the
23 MGH association that is worrisome particularly at this stage.
24 Not only was she not there. She works in a department that is
25 not the E.R. She's not working with the same people. She's in

1 a cancer testing center basically doing --

2 MR. BRUCK: I must say I would have gone on had I not
3 been pretty sure that she was disqualified under *Morgan*. We
4 get back to this problem with Doctor David King and the
5 government's use of an MGH trauma surgeon at both guilt and
6 penalty phase with the IEDs. And this links back into thinking
7 about her sister in Afghanistan. Her connection to MGH may be
8 -- may end up being a little more problematic than we thought.

9 THE COURT: Well, okay. It didn't appear so today.

07:57 10 I think next is 391.

11 MR. WEINREB: That was agreed.

12 THE COURT: 393.

13 MR. WEINREB: 393 is a government motion. Your Honor,
14 the government would argue that this juror is substantially
15 impaired in many ways. She -- for one thing, she really didn't
16 seem to understand the questions that she was being asked very
17 well, and the chief indication of that was that she seemed to
18 be a juror who wanted very much to be a good juror, say the
19 right thing. She was very agreeable. And as a result, she
07:58 20 essentially answered yes to whatever anybody asked her about
21 anything so that -- I asked a series of questions. She
22 answered yes to all of them. The Court did; Mr. Bruck did.
23 They were all contradictory in her answers. But I think that
24 if you try to sort through all of that -- first of all, we'd
25 argue that that alone substantially impairs her.

1 But, in addition, if you look at what she wrote on her
2 questionnaire, before anybody was asking her questions, she
3 indicated quite plainly that she is unable to impose the death
4 penalty or unwilling to do so, that she's against it, and that
5 she personally couldn't do it. In response to Question 90, she
6 couldn't even give the Court an answer.

7 There's just no -- it's impossible to conclude from
8 the -- she didn't answer it on the questionnaire. And when the
9 Court asked her to read through all the possibilities and then
07:59 10 pick one, she still couldn't do it. I think that there's no
11 way to have confidence either that this person would be able to
12 give fair consideration to aggravating factors and impose a
13 death penalty but, moreover, that she would be a good juror in
14 general, that she would be able to follow legal instructions.
15 This is a case with 30 offenses. Many of them have -- the
16 924(c) counts, among others, are going to be very complicated
17 in terms of how they need to be decided because of all the
18 disagreements among the courts about what the unitive
19 prosecution is under those statutes. There are conspiracy
08:00 20 charges. There are other counts, like bombing a place of
21 public use with numerous elements, not all of which are very
22 straightforward.

23 And it's hard to believe that this is a juror who
24 could deliberate well with other jurors since she doesn't seem
25 to know her own mind, isn't able to articulate what's on her

1 mind, can't seem to even answer questions when they're written
2 down for her and she's given the opportunity to do a multiple
3 choice. So there's -- we would argue that she is simply not
4 the right juror for this case.

5 MR. BRUCK: Well, we think there's a little
6 inconsistency here between this and the juror that -- whose
7 qualification the state just supported. I don't mean to
8 suggest that they are identical in every respect. There are
9 obviously differences between them, but in the critical respect
08:01 10 they're the same. They gave inconsistent responses at times.
11 But the bottom line for this juror, while she would have a hard
12 time predicting what she would do, which is something the Court
13 has addressed many times over and not find to be disqualifying,
14 she clearly stated that, if she was convinced that the death
15 penalty was appropriate, she could vote for it; and if she
16 wasn't, she wouldn't. That's the test.

17 And beyond that, this is the domain of the -- that's
18 what the 20 peremptory challenges are for. If the government
19 doesn't trust her to be a good juror, they know what to do.
08:01 20 But to qualify the juror we just discussed a moment ago and
21 then to say that this juror, who is so similar in the material
22 respects, is unqualified, I think would be inconsistent and
23 really quite unfair.

24 THE COURT: I agree that they are, on the record, that
25 taken as a record, they are similar in many respects. They

1 gave similar answers and vacillated similarly. I think they
2 are completely different in the overall appreciation of them.

3 I really don't know what this juror thinks, whereas I
4 think I have a sound judgment about what the other juror
5 thinks. She seems like a very lovely lady, but -- and I think
6 I would agree that she's trying to do the right thing. She
7 wanted to in some extent give an answer that was the right
8 answer to give. But I just don't know that she was giving us
9 answers that we could rely on.

08:02 10 It did appear a couple of times that she was kind of
11 puzzled about the question, but then she went ahead and
12 answered it. I don't know whether to rely on the answer she
13 gave in the questionnaire when she said she was a 1, and she
14 answered 95 "no." Those could be right, but I'm not sure of
15 that either.

16 I just -- she is just someone who I don't think has
17 given us a basis for thinking that she can be a reliable juror
18 to follow instructions. So I will excuse her. I recognize
19 that it's -- it looks fishy given the cold record, but I rely
08:03 20 on the different sense of them as they answered the questions.
21 So I would excuse her.

22 394.

23 MR. WEINREB: She was excused.

24 THE COURT: She left, right?

25 MR. WEINREB: Yes. We agreed on her.

1 THE COURT: I remember her now. I had a blank for a
2 minute there.

3 395.

4 MR. WEINREB: No motion.

5 THE COURT: Legal assistant -- legal executive
6 assistant.

7 396.

8 MR. WEINREB: So, your Honor, the government has a
9 motion on 396. I won't belabor this one because I think that,
08:04 10 now that we've had some experience with jurors, we've seen two
11 kinds of jurors who steadfastly say that they are not sure that
12 they could impose the death penalty even in a case where they
13 intellectually believed it was the right sentence to give.

14 There are jurors who simply say that because they're
15 projecting themselves into an unfamiliar situation, and maybe
16 nobody can say whether they could actually do it under those
17 circumstances. And then there are jurors who are genuinely
18 unsure because they have scruples against the death penalty
19 that are so strong that they're really not sure they could ever
08:04 20 overcome them in any case.

21 That's this juror. She made it perfectly clear that
22 that was her outlook, that she is -- that she is a -- although
23 she believes intellectually or in theory that the death penalty
24 is an appropriate punishment and doesn't fault other jurors for
25 imposing it in other cases, that because of her Catholic

1 beliefs and other moral beliefs that she is genuinely unsure if
2 she could ever impose it in any case.

3 And I think it was quite telling that the only case
4 that she talked about in which she could potentially impose it
5 is one in which her own children were the victims, were killed.
6 And even then she was not able to say I could do it if it were
7 my own kids. All she was able to say was, I'd think about it.
8 Maybe if it was my own kids, I'd be able to think about it.

9 That is the -- so that, I think, is one definition of
08:05 10 a juror who is substantially impaired in her ability to
11 consider aggravating factors and impose the death penalty.
12 Basically, she has to -- at a minimum, to be qualified to sit
13 on the jury, she has to be able to follow the law, which is
14 that she can meaningfully consider imposing the death penalty
15 if in her intellect tells her that -- and she can't say that.
16 All she can say is that she's skeptical of her ability to do it
17 highlighted by the fact that it would have to be her own kids
18 for her to even be able to say maybe.

19 And then on top of that, she got very emotional when
08:06 20 she said that. And when she was pressed again about the
21 possibility of giving it in a case where -- even where it was
22 her own kids, she not only seemed emotional in the sense of
23 tearing up, but she almost seemed angry just thinking about the
24 whole issue. And I think that that is just the tip of the
25 iceberg for her, that the prospect of personally having to

1 impose the death penalty -- maybe it's -- I'm sure it's an
2 emotional experience for anybody. But there can come a point
3 when it can become too emotional and your emotions overcome
4 you, and you're not making a decision according to the
5 standards that you should be applying. And she is someone who
6 I think it is reasonable to anticipate would fall into that
7 category.

8 MR. BRUCK: Well, I think Question 95 has gradually
9 led us into doing that which the Court has not allowed the
08:07 10 parties to do, which is to, in effect, get the jurors to commit
11 imposing the death penalty in this case because that is the way
12 it is worded. And I think that's where we tripped up. This is
13 another example of a juror who, looking ahead, hypothetically,
14 right in the presence of this defendant, talking about this
15 case, ran into this obstacle. But I think that imposes an
16 additional hurdle that *Witherspoon* does not, so we'd leave it
17 to the Court on that basis.

18 THE COURT: It would be interesting what -- I
19 appreciate those issues -- but what either of you think about
08:08 20 her life schedule, if I could put it that way? She said she
21 worked 80 hours a week. She's taking a course at night.

22 MR. BRUCK: One night a week when we leave, Thursday,
23 which is the end of the court week. 80 hours a week.

24 THE COURT: She looks like a person who can handle a
25 lot.

1 MR. BRUCK: She does.

2 MR. WEINREB: I didn't think the course -- I agreed
3 with Mr. Bruck that the timing of the course didn't seem
4 like --

5 THE COURT: It wasn't so much the timing. That was
6 fine. It was the question of an additional burden, and I don't
7 know -- the 80 hours is probably an exaggeration but --

8 MR. WEINREB: Right.

9 THE COURT: -- obviously a busy person. Neither of
08:08 10 you think that's an issue?

11 MR. WEINREB: I don't know that I would say that it's
12 an issue in and of itself. But I think, for somebody who is
13 already being put under, I think, is likely to be put under
14 vast emotional stress by the decision making, it's not going to
15 help that, on top of everything else, her busy work life, her
16 busy home life, and her schooling, that she's now got an
17 additional 35-hour-a-week job here in the courtroom, plus the
18 commute, and that -- I just think we've got 1,350 jurors to
19 choose from. We're finding plenty who are, you know, genuinely
08:09 20 fair and impartial jurors who say that they could go either way
21 on the death penalty, who do not have a hardship, who are
22 otherwise qualified in every way. It just seems unfair to the
23 government, in my view, and I think unfair to her, as the Court
24 may be suggesting, to subject her to this process when she
25 really doesn't seem to be qualified for it in the first place.

1 MR. BRUCK: I would just point out that she is one of
2 the few jurors who or relatively few jurors who flat out said
3 she's getting paid. So she doesn't have a hardship. Everybody
4 is busy. I point out that she is an 8, 8(h), on her
5 questionnaire.

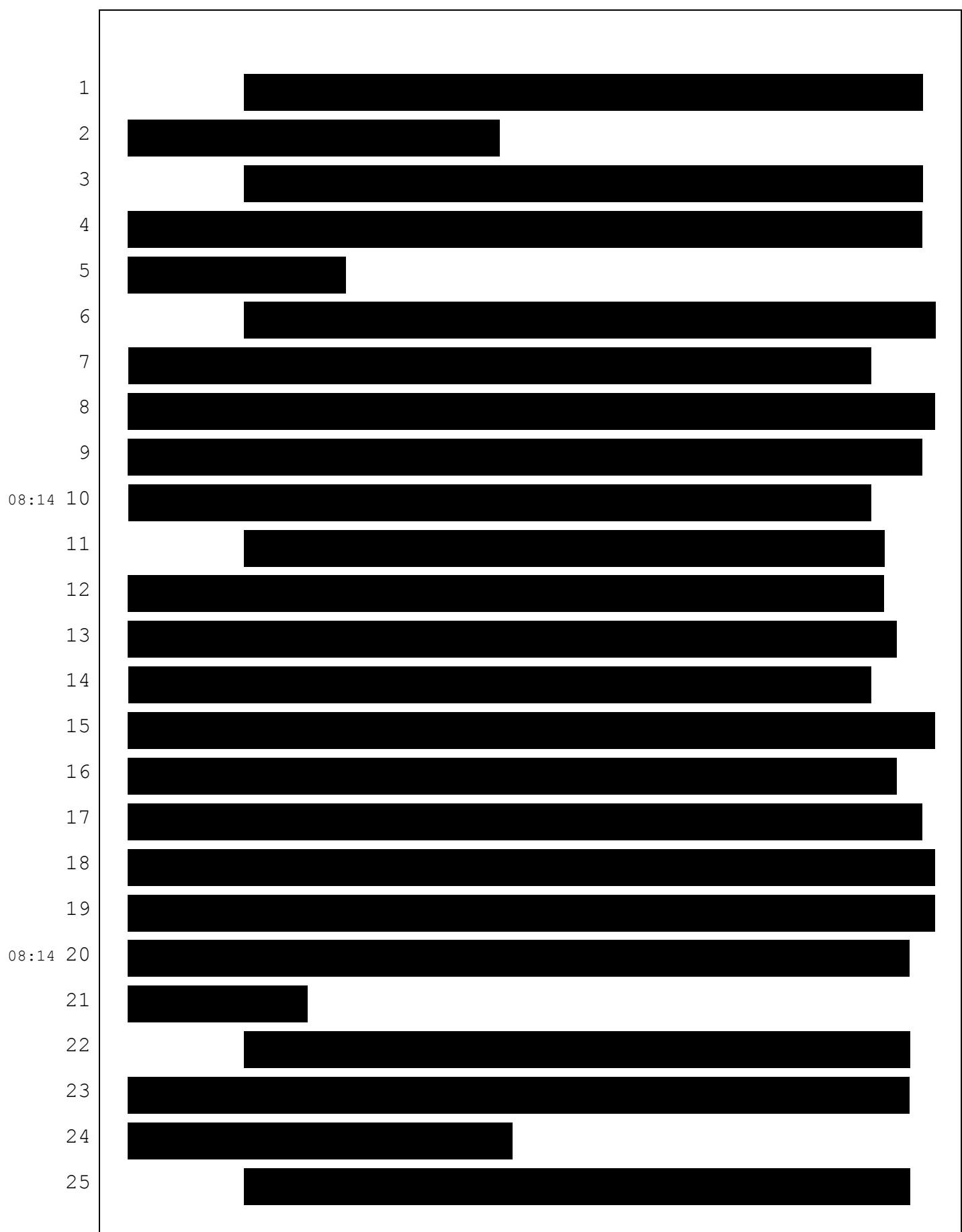
6 MR. WEINREB: Then, your Honor, I'd also point out
7 that -- in contrast to what Mr. Bruck said about that this was
8 a question about whether she could impose the death penalty in
9 this case, his last question to her was: And is the reason
08:10 10 that you can't say beyond "I'm not sure" because you haven't
11 heard the evidence? And she said, No, it has nothing to do
12 with not hearing the evidence. It purely has to do with her
13 scruples against the death penalty and her inability to say
14 that she could do it in any case regardless of the evidence.

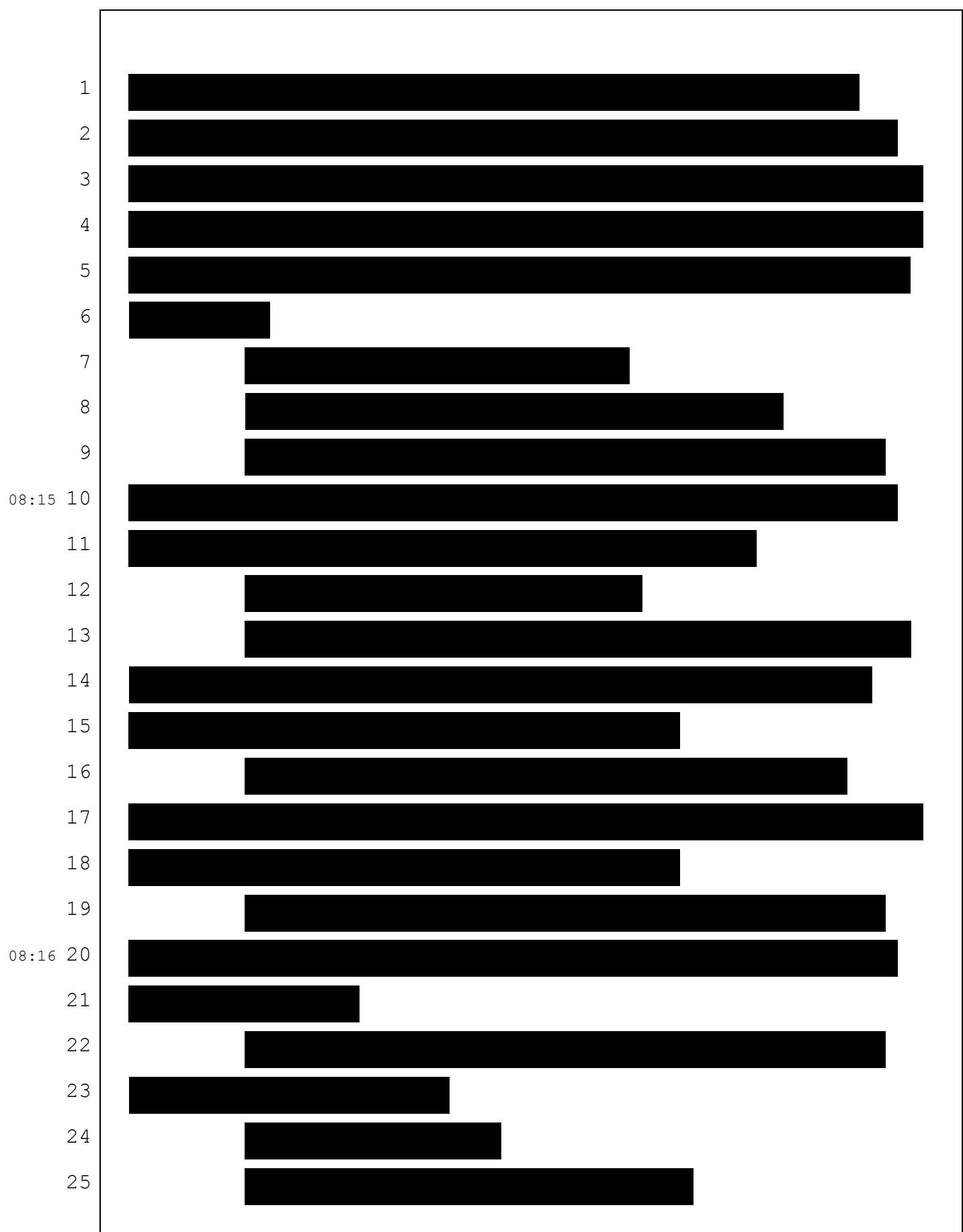
15 THE COURT: I think I have to regard her as
16 substantially impaired. She really stuck to not sure. And I
17 think -- I'm not sure that every "not sure" is disqualifying.
18 It was -- in context, I think she wasn't able to tell us that
19 she affirmatively would be open to that as a realistic
08:11 20 possibility. I think in -- sometimes the neutral ground, the
21 middle ground, isn't enough to be open to meaningful
22 consideration, and so I think I have to conclude that she's
23 substantially impaired.

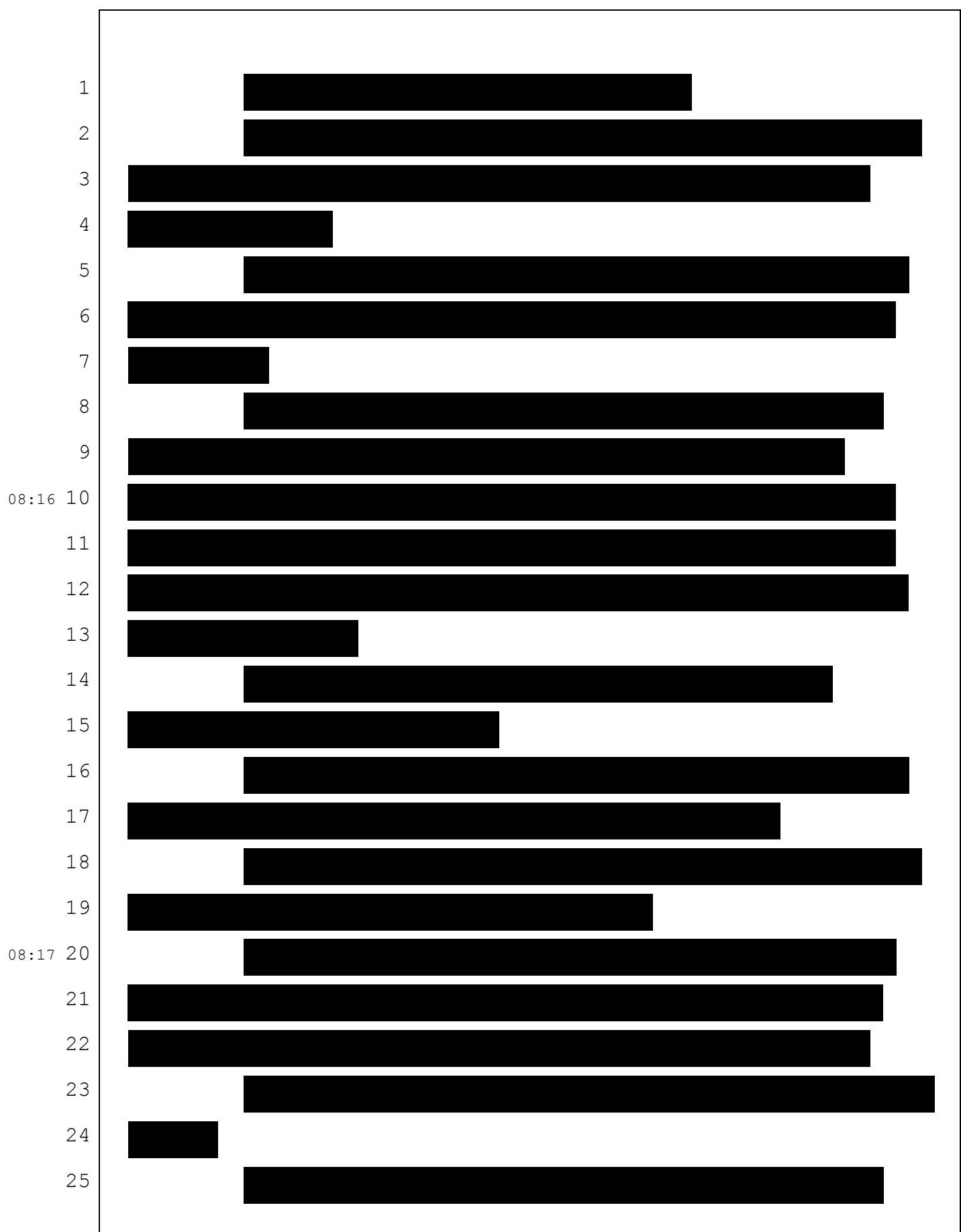
24 399.

25 MR. CHAKRAVARTY: Your Honor, on 399, the government

1 has a motion. [REDACTED]
2 [REDACTED]
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08:12 10 [REDACTED]
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08:18 10 [REDACTED]
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08:18 20 [REDACTED]
21 [REDACTED]
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23 [REDACTED]

24 Okay. Just to record a couple -- there's some -- I'm
25 told there's some question whether we formally put on the

1 record that No. 332 would be put in the excuse category. You
2 can look that up. I don't even know who it is. I just have
3 the number.

4 MS. CLARKE: 332 I show as excuse.

5 THE COURT: We didn't know if we put it on the record.
6 I think everybody regards it as having been done. So it's now
7 on the record.

8 318 that we suspended judgment on, I will also not
9 qualify. That's the person whose husband worked at City Hall.
08:19 10 Sorry Miss Conrad wasn't here to hear me say that.

11 MS. CLARKE: We'll tell her.

12 THE COURT: Just also for the record, earlier today we
13 did -- I think we did it at the beginning. I'm pretty sure we
14 did. 276, 357, 392, 397, 398.

15 I think you had previously, last week, I guess, given
16 us through the series tomorrow, so we already have what your
17 joint proposals were on that. We are about to dip into Panel
18 C. Originally, we had asked everybody to do -- you know, look
19 at A and B and give us the things you jointly agreed on and we
08:20 20 can just scrub that. I think -- unless you've already done
21 it -- that's a step we can skip this time because we're now in
22 the process of identifying, say, the next hundred in the
23 sequence. And we have been, in fact, getting from you things
24 you look as the next day, the next day out after that. So I
25 don't think we need a separate master list for Panel C. We've

1 just adopted in practice what we had done on that.

2 MR. WEINREB: So the clerk will be giving us proposed
3 hardship strikes from Panel C?

4 THE COURT: We have somebody going through them right
5 now.

6 MR. WEINREB: Okay.

7 MS. CLARKE: Judge, we had early on exchanged Panel C
8 once, and then we were -- both sides were looking at the
9 return. And so we were very --

08:21 10 THE COURT: If you're halfway there and you don't mind
11 going the rest, that will be fine. I don't want to impose the
12 additional burden when we're sort of doing the same thing at
13 this stage. If you could reduce it by any number --

14 MS. CLARKE: I think we are close to being ready.

15 THE COURT: Okay, because it may be -- maybe as soon
16 as -- maybe as soon as Friday, I think, and, if not, certainly
17 Tuesday that we would be in Panel C.

18 MS. CLARKE: Right. How far is -- how far does the
19 Court intend to go in terms of qualifying? To 70?

08:22 20 THE COURT: That's the number we've been using. I
21 know there is some sort of back strikes going on, which I
22 haven't considered. It may depend on the outcome, you know,
23 because we need a margin not only for that. That was one of
24 the reasons for the margin, but for other events in people's
25 lives that can happen.

1 It's late. Let me just raise this for your thought.
2 You don't even have to -- when we get to the peremptory stage,
3 it has occurred to me -- and I don't know whether you've talked
4 about it -- as a method, we don't necessarily need the bodies
5 here. It could all be conceivably done on a chart. So I don't
6 know that there's any reason why we couldn't do that.

7 In a more ordinary case, particularly with much more
8 limited voir dire here in Massachusetts, you would want to see
9 the person again. But you have all these things, and you have
08:23 10 your notes and everything like that. It may be efficient to do
11 it without them and just call in the panel having been reduced
12 by the peremptories.

13 MS. CLARKE: Has the Court considered how we'll do the
14 strikes?

15 THE COURT: Only to think that I would follow the
16 procedure I usually do, but I don't know if anybody wants to
17 address that.

18 MS. CLARKE: Which would be?

19 THE COURT: No back strikes. So both sides, my
08:23 20 typical case, you have jurors and alternates in the box. The
21 time would come for peremptories. Counsel would come to the
22 side. The government will go first, strike anybody in the box,
23 two, three, four, five, however many they wanted. The defense
24 then would strike from anybody remaining. The empty seats
25 would be filled. Only the empty seats would be candidates for

1 future strikes. The second round the defense would go first,
2 followed by the government, and then we keep flipping back, and
3 each round potentially would get narrower and so on until the
4 process was finished.

5 It does raise the question about designating
6 alternates. My usual practice, I tell lawyers -- we had a
7 12-person-plus-two-alternate jury. Fourteen is what we
8 typically do. I would tell the lawyers that the alternates
9 would be the last two seated so that they knew when they got to
08:24 10 the last two -- say, you had -- well, they could know that
11 those people would be designated alternates no matter where
12 they were in the box. In other words, we don't physically
13 separate them. It could be the juror in Seat No. 3 and the
14 juror in Seat No. 9 could be the alternates, and they wouldn't
15 know it. They'd just know they got seated.

16 MR. BRUCK: So under that system, jurors who were the
17 last qualified could be regular jurors. We would not have a
18 panel for the main jury and then a separate panel for the
19 alternates?

08:25 20 THE COURT: Correct, that's right.

21 MR. BRUCK: Okay.

22 THE COURT: That's right. You wouldn't concentrate on
23 12 and then concentrate on six.

24 MR. BRUCK: Right. Okay.

25 THE COURT: The reason for that, from my point of

1 view, is it doesn't tell the alternates who they are, that they
2 know that they're alternates. I think that's to be avoided if
3 we can. So anyway --

4 MS. CLARKE: Thank you.

5 THE COURT: Okay. Thank you.

6 (Whereupon, at 4:56 p.m. the trial recessed.)

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1 C E R T I F I C A T E
23 We, Marcia G. Patrisso, RMR, CRR, and Cheryl
4 Dahlstrom, RMR, CRR, Official Reporters of the United States
5 District Court, do hereby certify that the foregoing transcript
6 constitutes, to the best of our skill and ability, a true and
7 accurate transcription of our stenotype notes taken in the
8 matter of Criminal Action No. 13-10200-GAO, United States of
9 America v. Dzhokhar A. Tsarnaev.10
11 /s/ Marcia G. Patrisso
12 MARCIA G. PATRISSO, RMR, CRR
13 Official Court Reporter14 /s/ Cheryl Dahlstrom
15 CHERYL DAHLSTROM, RMR, CRR
16 Official Court Reporter17 Date: February 11, 2015
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